

BEFORE THE
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:)
)
COMMONWEALTH EDISON COMPANY,)
)
)
)
Annual formula rate update and) No. 14-0312
revenue requirement)
reconciliation under Section)
16-108.5 of the Public)
Utilities Act.)

Chicago, Illinois
August 27, 2014

Met, pursuant to notice, at 10:00 a.m.

BEFORE:

MS. LESLIE D. HAYNES
MS. SONYA TEAGUE KINGSLEY,
Administrative Law Judges

1 APPEARANCES:

2 ROONEY RIPPKE & RATNASWAMY, by
3 MR. E. GLENN RIPPKE
4 350 W. Hubbard Street
5 Suite 600
6 Chicago, Illinois 60654
7 (312) 447-2800

8 - AND -

9 MR. RICHARD BERNET
10 MR. CLARK STALKER
11 10 South Dearborn Street
12 Suite 4900
13 Chicago, Illinois 60603

14 - AND -

15 EIMER STAHL, LLP
16 RONIT C. BARRETT
17 224 S. Michigan Avenue
18 Suite 1100
19 Chicago, Illinois 60604
20 (312) 660-7611
21 for Commonwealth Edison Company;

22 MR. JOHN FEELEY,
23 MS. JESSICA CARDONI
24 MS. KIMBERLY J. SWAN
25 160 North LaSalle Street, Suite C-800
26 Chicago, Illinois 60601
27 Appearing on behalf of Staff;

28 MS. SUSAN L. SATTER
29 MR. SAMEER H. DOSHI
30 100 West Randolph Street, 11th Floor
31 Chicago, Illinois 60601
32 Appearing on behalf of the
33 People of the State of Illinois;

1 APPEARANCES (CONTINUED):

2

3 CITIZENS UTILITY BOARD, by
4 MS. JULIE SODERNA
5 MS. CHRISTIE HICKS
6 309 W. Washington Street
7 Suite 800
8 Chicago, Illinois 60602
9 (312) 263-4282
10 for CUB;

11

12 LAW OFFICES OF GERARD T. FOX, by
13 MR. GERARD T. FOX
14 Two Prudential Plaza
15 180 North Stetson Street, Suite 3500
16 Chicago, Illinois 60601
17 Appearing on behalf of RESA;

18

19 LUEDERS, ROBERTSON & KONZEN, LLC, by
20 MR. RYAN ROBERTSON
21 P.O. Box 735
22 1939 Delmar Avenue
Granite City, Illinois 62040
Appearing on behalf of IIEC;

23

24 MS. JENNIFER HAMMER
25 ILLINOIS CHAMBER OF COMMERCE
26 215 E. Adams St.
27 Springfield, IL 62701
28 Appearing for the Illinois
29 Chamber of Commerce.

30

31 SULLIVAN REPORTING COMPANY, by
32 Carla L. Camiliere, CSR
Tracy Overocker, CSR

1	<u>I N D E X</u>					
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	<u>Re-</u> <u>direct</u>	<u>Re-</u> <u>cross</u>	<u>By</u> <u>Examiner</u>
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1 JUDGE HAYNES: Pursuant to the direction of the
2 Illinois Commerce Commission, we now call Docket
3 No. 14-0312. This is Commonwealth Edison Company,
4 Annual Formula Rate Update and Revenue Requirement
5 Reconciliation under Section 16-108.5 of the Public
6 Utilities Act.

7 May have the appearances for the
8 record please.

9 MR. BERNET: On behalf of Commonwealth Edison
10 Company, Richard Bernet, B-e-r-n-e-t; and Clark
11 Stalker, S-t-a-l-k-e-r, 10 South Dearborn,
12 Suite 4900, Chicago, Illinois 60603, (312) 394-3623.

13 MR. RIPPPIE: And also on behalf of Commonwealth
14 Edison Company, Glenn Rippie, Rooney, Rippie, &
15 Ratnaswamy, LLP, 350 West Hubbard Street, 600,
16 Chicago, 60654.

17 MS. CARDONI: On behalf of staff witnesses for
18 the Illinois Commerce Commission, Jessica Cardoni,
19 John Feeley and Kimberly Swan, 160 North LaSalle,
20 Suite C-800, Chicago, Illinois 60601.

21 MS. SATTER: Appearing on behalf of the people
22 of the State of Illinois, Susan L. Satter and Sameer

1 Doshi, 100 West Randolph Street, Chicago, Illinois
2 60601.

3 MS. HICKS: On behalf of the Citizens
4 Utility --

5 JUDGE HAYNES: I don't think that microphone is
6 on.

7 MS. SATTER: Now, it's on.

8 MS. HICKS: On behalf of the Citizens Utility
9 Board, Christie Hicks and Julie Soderna, 309 West
10 Washington, Suite 800, Chicago, Illinois 60606.

11 MR. ROBERTSON: Ryan Robertson, Lueders,
12 Robertson and Konzen, 1939 Delmar, Granite City,
13 Illinois 62040, on behalf of Abbott Laboratories,
14 Inc., AbbVie, Inc., Caterpillar, Inc., Chrysler
15 Corporation, Anchorage (phonetic) Energy, LP,
16 ExxonMobil Power & Gas Services, Inc., Ford Motor
17 Company, General Iron Company, Sterling Steel
18 Company, Thermal Chicago, University of I Illinois,
19 collectively known as the Illinois Industrial Energy
20 Consumers.

21 JUDGE HAYNES: Are there any further
22 appearances?

1 MS. HAMMER: On behalf of the Illinois Chamber
2 of Commerce, Jennifer Hammer, 215, East Adams Street,
3 Springfield, Illinois 62701.

4 JUDGE HAYNES: Are there any more?

5 (No response.)

6 Let the record reflect there are none.

7 The first thing that needs to be
8 addressed this morning are the various outstanding
9 petitions to intervene.

10 So I believe that there is one from
11 the Illinois Chamber of Commerce.

12 Is there any objection to granting
13 that petition to intervene?

14 (No response.)

15 Hearing none, it's granted.

16 Next is a petition for leave to
17 intervene on behalf of Chrysler Corporation and
18 Abbott Labs as part of IIEC.

19 Is there any objection to granting
20 that petition to intervene?

21 (No response.)

22 Hearing none, it's granted.

1 Also, the petition to intervene of --
2 JUDGE TEAGUE KINGSLEY: The next is University
3 of Illinois and Thermal Chicago Association of IIEC.
4 Are there any objections?
5 (No response.)
6 Hearing none, that petition is
7 granted.
8 Next is the petition filed by
9 Anchorage (phonetic) Energy, LLP, member of IIEC, are
10 there any objections?
11 (No response.)
12 That petition is granted.
13 Ford Motor Company and Sterling Steel
14 Company, LLC, also members of IIEC, are there any
15 objections?
16 (No response.)
17 That petition is granted.
18 AbbVie, Inc., as members of IIEC, any
19 objections?
20 (No response.)
21 That motion is granted.
22 General Iron Industries, Inc., and

1 Caterpillar, Inc., as members of IIEC, any
2 objections?

3 (No response.)

4 That petition is granted.

5 ExxonMobil Power and Gas Services, Inc
6 as a member of IIEC, are there any objections?

7 (No response.)

8 That petition is granted.

9 The Illinois Chamber of Commerce, are
10 there any objections to that petition?

11 (No response.)

12 That petition is granted.

13 JUDGE HAYNES: I think we're ready to go ahead
14 with the first witness.

15 ComEd?

16 MR. RIPPIE: Very well. Your Honors, the
17 Company's first witness is Mr. James Warren.

18 Would Your Honors like to swear in all
19 of the witnesses that are physically present now or
20 would you prefer to do it at the time?

21 JUDGE HAYNES: We will go through and introduce
22 them and swear them in one at a time.

1 Does Staff want to be able to see the
2 witness?

3 MS. CARDONI: I think so, I will move over
4 here.

5 JUDGE HAYNES: Good morning, Mr. Warren.

6 THE WITNESS: Good morning.

7 JUDGE HAYNES: Please raise your right hand.

8 (Witness sworn.)

9 JAMES I. WARREN,
10 called as a witness herein, having been first duly
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY

14 MR. RIPPIE:

15 Q Good morning, Mr. Warren.

16 Could you please state and spell your
17 full legal name for the record.

18 A My name is James I. Warren; J-a-m-e-s, I.,
19 W-a-r-r-e-n.

20 Q And, Mr. Warren, have you prepared rebuttal
21 testimony for submission to the Illinois Commerce
22 Commission in this docket?

1 A Yes, I have.

2 Q Is the document designated as Commonwealth
3 Edison Exhibit 23.0 consisting of 15 narrative pages
4 that testimony?

5 A Yes, it is.

6 MR. RIPPIE: For the record, Your Honors, that
7 document was filed on E-docket on 7/23/14, and it was
8 filed as part of the file bearing docket ID
9 No. 216811.

10 BY MR. RIPPIE:

11 Q Mr. Warren, was Commonwealth Edison
12 Exhibit 23 prepared under your direction or by
13 yourself?

14 A Yes, it was.

15 Q Do you have any additions or corrections to
16 make to Commonwealth Edison Exhibit 23.0?

17 A I do not.

18 Q If I were to ask you the same questions as
19 appear on that exhibit, would you give the Commission
20 the same answers today?

21 A I would.

22 Q Mr. Warren, have you also prepared or

1 prepared under your direction and control the
2 surrebuttal testimony for submission to the Illinois
3 Commerce Commission in this docket?

4 A Yes, I have.

5 Q Is that Commonwealth Edison 33 for
6 identification?

7 A Yes, it is.

8 MR. RIPPIE: Your Honors, that document
9 consists of 12 narrative pages. It was filed on
10 E-docket on 8/21/14 as part of filing ID No. 218041.

11 BY MR. RIPPIE:

12 Q Mr. Warren, do you have any additions or
13 corrections to make to ComEd Exhibit 33.0?

14 A No, I don't.

15 Q If I were to ask you the same questions as
16 appear on that document, would you give the
17 Commission the same answers today?

18 A Yes, I would.

19 MR. RIPPIE: Thank you.

20 Your Honors, Mr. Warren is now
21 available for cross-examination, and I would offer
22 Exhibits 23.0 and 33.0 into evidence.

1 JUDGE HAYNES: Is there any objection to
2 admitting 23.0?
3 (No response.)
4 And hearing none, those ComEd exhibits
5 are admitted.
6 (Whereupon, ComEd Exhibits 23.0
7 and 33.0 were admitted into
8 evidence.)
9 JUDGE HAYNES: Who is up first?
10 MS. SATTER: I believe I am.
11 JUDGE HAYNES: Okay.
12 CROSS EXAMINATION
13 BY
14 MS. SATTER:
15 Q Good morning, Mr. Warren.
16 My name is Susan Satter. I represent
17 the People of the State of Illinois. I have a few
18 questions for you.
19 First, in your direct testimony --
20 excuse me -- you only have rebuttal testimony and
21 surrebuttal testimony.
22 A Yes.

1 Q In your rebuttal testimony at Page 2, you
2 say you don't believe the issue related to the income
3 tax treatment of the reconciliation needs to be
4 complex or difficult, right?

5 A That's correct.

6 Q So let me ask you this, do you agree that
7 interest is paid to compensate for the time value of
8 money?

9 A Yes, I do.

10 Q And if money is spent in advance before the
11 revenues are received, interest can compensate for
12 the time value of that money, right?

13 A Could you repeat that.

14 Q I said if money is spent, for example,
15 taxes are paid before the revenues for those taxes
16 are received, interest can compensate for the time
17 value of money?

18 A Well, you're talking there about two --
19 three different parties. There is a party in the
20 middle --

21 Q Wait. Hold on. Let me strike the question
22 because I think it's confusing.

1 Let me ask you this: If money is not
2 spent, then there is no time value of money lost
3 because the money hasn't been spent?

4 A No, I wouldn't say that.

5 Q Now, you use two models in what you call a
6 prescribed interest and a cost-based model; is that
7 right?

8 A That's correct.

9 Q Okay. And you were asked in a data
10 request, AG 8.02, to provide citations to sources
11 where these terms were used.

12 Do you recall that?

13 A I do recall that, yes.

14 Q And you responded that the phrases
15 "prescribed interest" and "cost-based interest" are
16 not of Mr. Warren's invention; is that right?

17 Do you recall that?

18 A Yes, I do recall that.

19 Q Okay. And you were asked to provide
20 citations to sources where the theory of "prescribed
21 interest" is addressed.

22 Do you remember that?

1 A I do.

2 Q And you provided a response -- you provided
3 a reference to the ICC Docket No. 13-0533, right?

4 A Hold on. Let me try to get the data
5 request, if I may.

6 Q I can provide it to you.

7 A I've got it. Can you give me the number of
8 the data request please.

9 Q 8.02.

10 A Yes, I do reference that docket, that
11 order.

12 Q And you did not provide any other
13 citations, did you?

14 A I did not.

15 Q And you did not provide any attachments?

16 A No, I did not.

17 Q Now, you say in your response that you
18 chose the terms quote:

19 "Because you independently believe
20 they are appropriate terms."

21 Is that right?

22 A That's correct.

1 Q Does that mean that you believe that the
2 terms described the models you present?

3 A They do.

4 Q And when did you first present those
5 models?

6 A I believe it was in rebuttal testimony.

7 Q And is that when you first presented them
8 to ComEd, as well?

9 A Probably, yes.

10 I'm not absolutely sure whether they
11 were made in a phone conversation prior to that, but
12 it's entirely possible it was first drafted in the
13 rebuttal testimony.

14 Q So you developed them for purposes of
15 analyzing the situations presented in this case?

16 A Yes, I did.

17 MR. RIPPIE: Hold on. I object to the question
18 as ambiguous.

19 By "them," do you mean the models or
20 the names? You asked about both.

21 MS. SATTER: Thank you.

22 The models.

1 THE WITNESS: The models, I don't believe are
2 ambiguous.

3 MS. SATTER: Oh, no, no, no. It wasn't whether
4 the models were ambiguous. He thought my question
5 was ambiguous.

6 THE WITNESS: Sorry. Sorry.

7 MS. SATTER: He was criticizing me, not you.
8 Don't worry.

9 THE WITNESS: That's okay then

10 BY MS. SATTER:

11 Q With that clarification, though, your
12 answer remains the same?

13 A Would you repeat the question. I'm sorry.
14 Or shall the --

15 Q I will repeat it.

16 The question was:

17 Did you develop the models presented
18 in your testimony for purposes of addressing the
19 situation in this case?

20 A Yes.

21 Q Now, I would like to refer to your rebuttal
22 testimony on Pages 7 and 8.

1 Now, here you present an example at
2 Line 135, and following you use an example with the
3 rate base is financed by 100 percent equity, right?

4 A 100 percent? I'm sorry.

5 Page 7 -- yes, I do.

6 Q Okay. And is it your experience that the
7 return on equity is referred to as interest?

8 A Return on equity?

9 Q Yeah.

10 A No, it's not.

11 Q Now, do you agree that interest associated
12 with the debt component of a utility's capital
13 structure is generally not grossed up for taxes in
14 ratemaking?

15 A In determining a pre-tax rate of return,
16 generally, the interest component of a utility
17 capital structure is not grossed up, that's correct.

18 Q And would you also agree that the size of
19 the debt component in a utility's weighted average
20 cost of capital will generally impact the incremental
21 income tax cost incurred as a result of the return,
22 of the overall return?

1 A Can you give me an example of what you mean
2 in terms of the impact that you're trying to
3 validate.

4 Q So, for example, if a capital structure has
5 55 percent debt and 45 percent equity, compared to a
6 capital structure with 60 percent debt and 40 percent
7 equity, is it correct that the incremental income tax
8 associated with those two capital structures will be
9 different?

10 A The incremental income tax is a function of
11 the equity component.

12 Q The size of the equity component?

13 A The size of the equity component and the
14 cost of the equity component.

15 Q Okay. So as the debt component gets
16 larger, obviously, the equity component, you would
17 expect to get smaller; is that right?

18 A It has to equal 100 percent, so if one goes
19 up, one has to go down, but the cost of the equity
20 component might go up.

21 Q Okay.

22 A And so that would offset the impact -- that

1 would increase the tax component.

2 Q Can you refer to Page 8 of your testimony,
3 basically, Lines 161 to 167.

4 A Yes, I am there.

5 Q And I believe it's the sentence beginning
6 at 164. You say the application of this model, being
7 the cost-based model to the reconciliation under
8 collections amount would therefore apply the
9 WACC-derived interest rate; i.e., the grossed-up rate
10 to the reconciliation under collection reduced by the
11 associated added balance?

12 A Yes, that is what it says.

13 Q Do you agree that if the Commission wanted
14 to reflect the actual cost to ComEd a financing
15 reconciliation balance, it would be necessary to
16 reduce the reconciliation balance by the associated
17 added to accurately reflect the company's cost?

18 A I would say that if the Commission
19 determined that the cost-based paradigm with what
20 applied -- first of all, we have the issue about the
21 equity gross up, which is inconsistent with that
22 model, but that aside, if that were consistently

1 handled, then the ADIT balance to the extent that it
2 represented a real cash impact, should be reflected
3 in the calculation of the base to which the interest
4 rate is attached -- applied. I'm sorry.

5 Q Applied.

6 So if the actual impact or the extent
7 of the impact of the income tax on reconciliation
8 balance can be determined, then that should be
9 reflected to calculate the actually reconciliation
10 balance to which interest should applied?

11 A In a cost-based paradigm consistently
12 applied, if you if you recognize the proper interest
13 rate, it should be applied to the proper base, the
14 proper base would consist of the reconciliation
15 balance, modified by an actual cash tax impacts.

16 Q Now, would that in effect mean that
17 ratepayers are not charged interest on taxes that the
18 company had not paid because they had not received
19 the revenues for those taxes?

20 A Would what mean that?

21 Q The adjustment to the reconciliation
22 balance for before the application of interest?

1 A Okay. Now, I'm sorry. Repeat that one
2 more time for me.

3 Q Okay. Does that adjustment that you just
4 talked about, the cost-based adjustment that we just
5 talked about, would that mean in effect that
6 ratepayers are not charged interest on taxes that the
7 company had not yet paid because the company had not
8 yet received the reconciliation revenues?

9 A In a cost-based model, what you're trying
10 to do is -- what you're attempting to do is
11 compensate to make the company whole for its costs,
12 so you're passing through its costs.

13 To the extent that its costs are
14 impacted by tax consequences, cash tax flows --
15 actual tax cash flows, then those are taken into
16 account.

17 Q Okay.

18 A Does that answer the question?

19 Q Yes, it does actually. Thank you.

20 Now, you state in your rebuttal
21 testimony whichever of the two models one chooses,
22 you cannot argue inconsistently, right?

1 You believe you have to use one model
2 or the other in connection with all reconciliations,
3 right?

4 MR. RIPPIE: Which question are you putting to
5 him? Those are two different questions and one of
6 them is a quote from his testimony, apparently, and
7 the other is a more general question.

8 MS. SATTER: Okay.

9 BY MS. SATTER:

10 Q Is it your belief that whichever of the two
11 models one chooses, one must use them consistently?

12 A If you select one of those two models, they
13 should be applied consistently.

14 Whichever model you choose has two
15 components; the components ought to be consistent.

16 Q And you believe that the Attorney General's
17 witnesses, Mr. Brosch and Mr. Effron do not apply the
18 models consistently; is that correct?

19 A Well, I think they -- my view is they take
20 two different positions with respect to models.

21 Mr. Effron is the one that selects a
22 model and asserts that he's applying it consistently,

1 but I don't believe the model he selects, the
2 cost-based model, is one that the Commission has
3 endorsed. And I don't believe that he has -- he
4 tries to pound a round peg into a square hole, as far
5 as I'm concerned with that line of argument.

6 Q Now, you have not testified for
7 Commonwealth Edison in any of the previous formula
8 rating proceedings, have you?

9 A No, I have not.

10 Q And you have not testified for the Ameren
11 Illinois Companies either, prior to this year?

12 A Prior to this year, that's correct.

13 Q In their formula rate cases?

14 A I'm sorry. You're right.

15 Q Okay. Now in accepting your assignment --

16 A Let me --

17 Q My question is: Whether you represent --
18 whether you testified on behalf of Ameren Illinois in
19 any of its formula rate cases?

20 A Yes, that's what I'm trying to --
21 considering.

22 Not on this issue, for sure.

1 Q Okay.

2 A Is that good enough?

3 Q Yes.

4 A Never addressed this issue before.

5 Q Right.

6 A Okay.

7 Q And when you accepted your contract to do
8 this case, did you become familiar with the
9 reconciliation-related income tax issues from recent
10 ICC, Illinois Commerce Commission, formula rate cases
11 or appeals, did you review what had come before this
12 case?

13 A I reviewed a few documents. I reviewed the
14 order. I don't know if it was a reconciliation case,
15 now. You're getting more technical than I'm capable
16 of.

17 But I have reviewed at least one prior
18 order that addressed this issue for ComEd and a
19 couple of pieces of testimony.

20 Q Did you know that from your work in
21 preparing for this docket, whether your client,
22 Commonwealth Edison, has previously advocated for a

1 cost-based approach by seeking an income tax gross-up
2 or factor for the WACC reconciliation interest rate?

3 MR. RIPPIE: I objection to the
4 characterization inherent in the question, that
5 Commonwealth Edison has done that.

6 That's an unproven fact and, in fact,
7 it's one we would dispute.

8 MS. SATTER: That's why I'm asking the witness
9 the witness has the right to answer "yes" or "no."

10 MR. RIPPIE: No. You asked him if he knew
11 something and then made a statement that's a fact.

12 And I'm making clear, that I'm
13 objecting to the characterization. I'm not objecting
14 to the witness telling you anything about his
15 knowledge.

16 If he has knowledge or doesn't have
17 knowledge about ComEd's position, he will tell you.

18 I'm objecting to the characterization
19 of the question.

20 MS. SATTER: The question is whether he knows.

21 JUDGE HAYNES: Can I have the question read
22 back.

1 (Whereupon, the record was read
2 as requested.)

3 JUDGE HAYNES: You can answer whether you know
4 or not.

5 THE WITNESS: It's my understanding that the
6 company had endorsed or supported an income gross up
7 in the computation of the applicable rate

8 BY MS. SATTER:

9 Q And do you know whether in the same case
10 ComEd advocated -- excuse me -- do you know whether
11 ComEd has previously argued that the
12 reconciliation-related added balance not be used as
13 an offset to the reconciliation balance as proposed
14 by Mr. Effron in this case?

15 A It is my understanding that they did
16 opposed the reduction of the base by an added
17 balance.

18 Q Okay. So there was an inconsistency there;
19 is that correct?

20 A Not necessarily.

21 Q Oh, so it's not inconsistent for ComEd to
22 argue for the gross up of the interest rate, while at

1 the same time, opposing the adjustment of the
2 reconciliation balance for income taxes?

3 A No, it depends on the basis for objecting
4 to the recognition of the ADIT balance.

5 If the basis for opposing it is that
6 there was no cash benefited produced, no cash
7 benefit, for instance -- for example, if the deferral
8 of the -- receipt of the reconciliation balance and
9 the tax imposed on the -- in its receipt, didn't
10 reduce the company's tax liability, for instance,
11 because it had an operating loss anyway, there was no
12 cash benefit associated with the deferral and,
13 therefore, they -- the pay shouldn't be reduced or
14 you couldn't know it.

15 The point is, the consistency is that
16 you can consider tax and should consider tax
17 consequences in a cost-based model.

18 Now, what those tax consequences are
19 is an entirely different question.

20 There could be tax consequences equal
21 to the balance or there could be no tax
22 consequences at all, in which case there wouldn't be

1 an offset, but that's a fact determination, not a
2 model determination.

3 Q So there are some circumstances where you
4 would make the adjustments you recommend in your
5 testimony on the cost-based model but then there
6 could be circumstances that would modify that?

7 A Not the gross-up piece. The rate wouldn't
8 matter. It would be the deferred tax piece because
9 that's supposed to capture cash -- you know, cash
10 consequences.

11 Q So you would sever the two?

12 A Yes --

13 Q It's possible to sever the two?

14 A Well, they're not severed, they're related
15 in terms of consistent treatment.

16 You could consider one, if it exists;
17 and should consider it, if it exists.

18 Q I believe this is in your surrebuttal
19 testimony. Let me double-check before I direct you
20 there.

21 Okay. In your surrebuttal testimony,
22 beginning on Page 5, you talk about you respond to

1 Mr. Brosch's citation to an Hawaii case; is that
2 right?

3 A Yes, I do.

4 Q Okay. Now, you were not personally
5 involved in the Hawaii docket that Mr. Brosch
6 discussed, were you?

7 A Unfortunately, I've never been to Hawaii.

8 Q Okay. Have you represented any Hawaii
9 utility in connection with decoupling or revenue
10 reconciliation?

11 A No.

12 Q So you offered no testimony or exhibits in
13 the Hawaii case?

14 A I did not.

15 Q And you were not subject to the
16 confidentiality agreement in that case, so you would
17 not have received protective materials?

18 A No. I didn't know there was a protective
19 agreement.

20 Q Now, at Page 6, Line 115 -- I'm sorry --
21 112. I'm starting at 112, you say that the PUCH,
22 which is the Public Utility Commission of Hawaii

1 ordered the use of the short-term debt rate finding
2 that the rate is consistent with principals espoused
3 by the parties that support the use of a short-term
4 debt rate, correct?

5 A Yes.

6 Q Okay. And they -- the Hawaii PUC, applied
7 this short-term debt rate to a revenue decoupling
8 mechanism, correct?

9 A It applied it to a balance.

10 Q Okay.

11 A And I understand that balance to be a
12 function of a revenue decoupling mechanism, yes.

13 Q So a reconciliation balance of some sort?

14 A Some sort.

15 Q Okay. And then you conclude that this is a
16 cost-based approach, right?

17 A Yes.

18 Q Okay. So is it your understanding that in
19 the Hawaii situation, the Commission concluded that
20 the short-term interest cost was the actual cost to
21 the utility for the lag in receiving the
22 reconciliation revenue at issue in that docket?

1 A All I have done is read the order and that
2 seemed, to me, where they came out; although, they
3 didn't have a statute that designated a particular
4 rate.

5 Q That's right.

6 So their cost-based rate, was a
7 short-term interest rate; is that correct?

8 A That was my understanding.

9 Q And do you agree that the short-term
10 interest rates currently are less than 1 percent?

11 A I have no idea.

12 Q You don't know what the short-term interest
13 rates are?

14 A I know what I'm getting on my bank
15 accounts, and it's a lot less than 1 percent,
16 so --

17 Q Okay.

18 A But I don't know what corporations'
19 short-term debt rates are.

20 Q Okay. Now, at Lines 119 and later, you
21 indicate that the Hawaii PUC did not order that the
22 reconciliation amount be reduced by the utility's

1 added balance.

2 Is that your understanding of the
3 order?

4 A From my reading of the order, there was no
5 such requirement imposed.

6 Q So do you understand that the utility
7 removed that tax effect voluntarily?

8 A There was no -- again, in the context of
9 the case, the peculiar context of that case, there
10 was no difference, as there is here between -- the
11 company reported the deferred income as taxable
12 currently, which is not what ComEd does.

13 So there was no difference between the
14 book reporting and the tax reporting as there is
15 here. So it was a different situation.

16 It was only once the company changed
17 its method of accounting for tax purposes that that
18 difference was created and that was after the order
19 was issued.

20 Q And so going forward, did the order address
21 that situation, that difference where there was a
22 book-tax difference?

1 A Well, I think what the order did was -- or
2 the order strongly suggested, shall we say, that the
3 company do something about its tax reporting
4 practice. The company then went ahead and did
5 something about it, and then submitted a letter to
6 the Commission saying, we changed our method, and we
7 are reducing the base by the tax effect of our
8 change, but the Commission never said they had to do
9 that.

10 Q But the company filed a letter indicating
11 that they would do it?

12 A That they do it.

13 Q That they did it?

14 A They did do it.

15 Q Whether the Commission ordered it or not,
16 in fact, the company did treat the reconciliation
17 balance the way Mr. Brosch described it?

18 A They treated it consistently with a
19 cost-based approach.

20 Q Okay. On Page 11 of your surrebuttal
21 testimony, you testified that the fact that I'm
22 inserting the statute denomination interest is

1 completely irrelevant.

2 Is that your position that the fact
3 that the statute causes the reconciliation amount
4 interest is irrelevant?

5 MR. RIPPIE: May have a citation, Susan, other
6 than the page number --

7 MS. SATTER: I think I said Page 11, Line 225.

8 THE WITNESS: The fact that the statute
9 dominates the interest is irrelevant for determining
10 the applicable model.

11 It is interest, as far as customers
12 are concerned, or maybe it's just the price of
13 electricity, as far as customers are concerned. That
14 is irrelevant to the model that's applicable.

15 BY MS. SATTER:

16 Q So you didn't take that into consideration
17 in developing your models?

18 MR. RIPPIE: I object to the question as
19 ambiguous. Take what into consideration?

20 MS. SATTER: The language of the statute.

21 THE WITNESS: No, I wouldn't say that. I think
22 elsewhere in my testimony, I state that the statute

1 refers to the imposition -- okay. Let me rethink
2 this for a second.

3 Give me the question one more time. I
4 think I may have an answer for you, but I need to
5 hear it one more time.

6 BY MS. SATTER:

7 Q My question was whether the language of the
8 statute affected the models you presented.

9 A It didn't impact the development of the
10 models, the identification, the description of the
11 models.

12 The fact that the statute calls this
13 "interest" is consistent with the prescribed interest
14 rate model; that it doesn't look to the costs that
15 were incurred or are incurred by ComEd.

16 It's a prescribed interest rate that
17 is applied to a balance, so I would not say that the
18 statute was completely irrelevant in the application
19 in determining which of the two models is applicable,
20 but it was irrelevant in determining -- in describing
21 the models to begin with.

22 Q Did you consider any other language of the

1 statute in developing your models?

2 A The statute was not instrumental in
3 developing the models. It was -- I looked at the
4 statute to see whether there was an indication as to
5 which model was applied and I looked to the
6 Commission's prior order to see how the Commission
7 had interpreted the statute and concluded that the
8 statute could be interpreted as imposing a prescribed
9 interest regime and that the Commission' prior
10 interpretation was consistent with that.

11 Q Did you consider any other section of the
12 statute other than that language about applying
13 interest to the reconciliation balance?

14 A No.

15 Q When I say "the statute" I mean 16-108.5.

16 A Right.

17 No, the only section to the statute
18 that I looked at were the ones that were relevant to
19 the interest computation.

20 Q Now, you were hired by ComEd for this case?

21 A Technically, by the law firm.

22 Q Okay. And you're being paid an hourly rate

1 for this case?

2 A I am.

3 Q What is your hourly rate?

4 A \$815.

5 Q Is there a flat fee or are you charging the

6 customer or your client strictly hourly?

7 A Hourly.

8 Q Is there a cap?

9 A There is not.

10 MS. SATTER: I have no further questions.

11 Thank you.

12 MR. RIPPPIE: May we have about 2 minutes, Your

13 Honors.

14 JUDGE HAYNES: Yes.

15 REDIRECT EXAMINATION

16 BY

17 MR. RIPPPIE:

18 Q Mr. Warren, if you recall, Ms. Satter asked

19 you about your surrebuttal testimony, Commonwealth

20 Edison Exhibit 33, and in particular a portion

21 thereof that contained a phrase that said "interest

22 was irrelevant." I believe that was on Page 11 of

1 your surrebuttal testimony beginning at Line 225.

2 Do you see that?

3 A Yes, I do.

4 Q Now, Ms. Satter asked you a series of
5 questions about whether the denomination of interest
6 was irrelevant in the context of the statute.

7 Was that the context in which your
8 testimony -- that sentence of your testimony was
9 describing the relevancy of interest?

10 A No, it was not.

11 Q Can you read the full sentence into the
12 record, just so it's clear -- after the siren.

13 A Let me read the sentence before so it's in
14 context:

15 "Focusing on the payments made
16 between ComEd and its customers does not
17 further the analysis of the nature or
18 amount of ComEd's cost to finance or
19 benefit from holding the reconciliation
20 balance.

21 "The fact that the charge or credit
22 vis-a-vis its customers is denominated

1 interest is completely irrelevant.

2 "ComEd is required to charge or
3 credit that interest in precisely the same
4 amount whether ComEd's actual source of
5 financing, its reconciliation balance is
6 its WACC, all equity, all short-term debt
7 or even the proceeds of a winning
8 lottery ticket."

9 Q Can the word "interest" be used to refer to
10 both revenues or costs?

11 A Yes. It will be used, you know, in both.
12 There is an interest cost imposed on the customer and
13 then ComEd's creditors impose an interest cost on
14 ComEd and they are separate and distinct.

15 Q When you refer to an interest cost being
16 imposed on the customers, does that refer to --
17 intend to refer to -- well, I won't lead you.

18 To what do you intend to refer? What
19 payment do you refer to?

20 A Well, the interest calculated under the
21 statute on the reconciliation balance.

22 Q And when you refer to interest that's paid

1 by ComEd, what are you referring to?

2 A ComEd's relationship with its providers of
3 capital. In this case, debt providers.

4 Q And does the fact that ComEd collects
5 revenue that is denominated as interest tell you
6 anything at all about the nature or the share of the
7 costs that would correspond to that revenue in a
8 cost-based model?

9 A No, they are --

10 MS. SATTER: Objection. I don't understand the
11 question. I think there is some ambiguity in it.

12 MR. RIPPIE: I will rephrase it. The last
13 thing I want is an ambiguous question.

14 MS. SATTER: Okay.

15 BY MR. RIPPIE:

16 Q Does the fact that revenue is denominated
17 as interest, tell you anything at all about the
18 nature of the costs that that revenue would be
19 related to in a cost-based model?

20 A My testimony on Lines 223 to 226 says --
21 addresses precisely that and indicates there is no
22 impact whatsoever.

1 Q My last question, Mr. Warren:

2 Does the question of whether or not a
3 Hawaii utility concludes that it will experience a
4 cash benefit from a tax deferral related to the
5 reconciliation of a decoupling account tell you
6 anything about whether ComEd will experience any cash
7 benefit as a result of the aided deferral related to
8 the reconciliation balance in this case?

9 A No, it has no implications whatsoever.

10 MR. RIPPIE: Thank you. That's all I have.

11 MS. SATTER: I do have a follow-up question.

12 JUDGE HAYNES: Go ahead.

13 RECROSS EXAMINATION

14 BY

15 MS. SATTER:

16 Q Mr. Warren, you just said that if revenue
17 received by the company is labeled or denominated
18 interest, that has no impact whatsoever. Okay. So I
19 have a couple of questions.

20 When you say "no impact whatsoever,"
21 no impact on what?

22 A Okay. If I loan you \$1,000 and charge you

1 interest on it, that will be interest that you will
2 be paying me.

3 Q Auh-huh.

4 A Now, the source of that \$1,000 from my
5 perspective could be that I had \$1,000 and lent it to
6 you, in which case I have no corresponding interest
7 expense, it's like equity.

8 Or I could have gone out and borrowed
9 \$1,000 to lend it to you, in which case I will be
10 paying interest to my lender.

11 But the fact that you're paying me
12 interest doesn't tell me anything about the cost of
13 the source of that money relating to the source of
14 that money.

15 Q Okay. So if you go out and borrow money,
16 so that you're paying a lender interest --

17 A Yes.

18 Q -- you are for tax purposes, you treat that
19 interest as a deductible expense, correct?

20 A Well, assuming it's deductible interest.
21 Not all interest is deductible, but generally.

22 Q Well, in a business setting.

1 A Regardless what I use -- if I'm borrowing
2 money and using it to finance whatever, any
3 operations, generally a company would deduct that
4 interest.

5 Q And then when you get paid back an amount
6 with interest, that interest is just part of your
7 income, is that what you're saying? That it's not
8 separated out as a deductible expense or for special
9 tax treatment like it is when it's a cost?

10 A Remember, the statute calls this
11 "interest," the reconciliation interest calculation,
12 it calls it "interest."

13 When a customer gets their bill,
14 they're going to pay -- they're going to write you a
15 check, and it's not going to say, there is this much
16 interest on it, it's just going to be the price of
17 electricity. All of those revenues are going to be
18 taxable.

19 Q So the revenues are taxable on the same
20 basis, regardless of whether it's as a result of an
21 interest charge or cost-of-service charge, right?

22 A Right.

1 Q On the other side, if the company had an
2 interest expense, that is treated differently?
3 A Treated differently than what?
4 Q Than the revenues in that the interest
5 expense is tax deductible?
6 A All of ComEd's expenses used in providing
7 service are deductible. Interest is just one of and
8 probably not the largest of many, many expenses that
9 they incur that are deductible, but they're two
10 separate worlds.
11 Q But it is tax deductible; so that is how
12 that cost is treated, the interest cost?
13 MR. RIPPIE: I object to the question. There
14 is two pronouns in there that I don't know what they
15 refer to.
16 JUDGE HAYNES: Can you rephrase the question.
17 MS. SATTER: I will withdraw the question.
18 JUDGE HAYNES: Okay.
19 MS. SATTER: Thank you.
20 MR. RIPPIE: Nothing further.
21 JUDGE HAYNES: Thank you, Mr. Warren.
22 THE WITNESS: Thank you, your Honor.

1 (Witness excused.)

2 I believe the next witness is in

3 Springfield.

4 Mr. Maisch, good morning. Mr. Maisch,

5 can you hear me?

6 THE WITNESS: Good morning. Yes.

7 MS. HAMMER: Good morning, Your Honors, and

8 counselors. I'm Jennifer Hammer, representing the

9 Illinois Chamber of Commerce. I previously entered

10 my appearance.

11 TODD C. MAISCH,

12 called as a witness herein, was examined and

13 testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MS. HAMMER:

17 Q Mr. Maisch, would you please state and

18 spell your full name for the record.

19 A Todd Carlock Maisch; T-o-d-d,

20 C-a-r-l-o-c-k, M-i-a-s-c-h.

21 Q And by whom are you employed?

22 A By the Illinois Chamber of Commerce.

1 Q And what is your position with the Chamber
2 of Commerce?

3 A I'm the president and CEO.

4 JUDGE HAYNES: Before you go any further, I
5 need to swear the witness in.

6 Could you please raise your right
7 hand.

8 THE WITNESS: (Complying.)

9 JUDGE HAYNES: Thank you.

10 (Witness sworn.)

11 JUDGE HAYNES: Thank you.

12 Go ahead.

13 TODD C. MAISCH,

14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY

18 MS. HAMMER:

19 Q Have you offered written testimony in this
20 proceeding?

21 A Yes.

22 Q The piece of testimony that I would like to

1 draw your attention to is marked Illinois Chamber of
2 Commerce Exhibit 1.0 and it is entitled, "The
3 rebuttal testimony of Todd Maisch, President and
4 Chief Executive Officer, Illinois Chamber of
5 Commerce," and it consists of seven pages of
6 questions and answers.

7 As described, is this your rebuttal
8 testimony in this proceeding, Mr. Maisch?

9 A Yes, it is.

10 Q And was this prepared under your direction
11 and control?

12 A It was.

13 Q Is it true and correct to the best of your
14 knowledge and belief?

15 A Yes, it is.

16 Q Are there any corrections to this
17 testimony?

18 A No.

19 Q If I were to ask you the same questions
20 today, would your answers be the same?

21 A Yes.

22 MS. HAMMER: Your Honors, this testimony was

1 filed with the Commission on August 13, 2014, and
2 bears the E-docket Serial No. 217640.

3 I now hereby move the Illinois Chamber
4 Exhibit 1.0 that I have described into the record and
5 I tender Mr. Maisch for cross-examination.

6 JUDGE HAYNES: Thank you.

7 Is there any objection to entering the
8 testimony of Mr. Maisch?

9 (No response.)

10 Hearing none, the testimony has
11 previously filed on E-docket is admitted into the
12 record.

13 (Whereupon, Illinois Chamber
14 Exhibit 1.0 was admitted into
15 evidence.)

16 JUDGE HAYNES: I understand the Attorney
17 General has cross for this witness.

18 MR. DOSHI: Yes, thank you, your Honor.

19 CROSS EXAMINATION

20 BY

21 MR. DOSHI:

22 Q Good morning, Mr. Maisch. My name is

1 Sameer Doshi. I'm an attorney with the Attorney
2 General's office.

3 A Good morning.

4 Q It's good to meet you virtually.

5 Can you see me okay?

6 A Yeah. Fine.

7 Q Okay. Thank you.

8 MR. DOSHI: Based on a discussion with Illinois
9 Chamber of Commerce counsel yesterday, I would like
10 to initially introduce a cross-exhibit into the
11 record that we're not going to ask Mr. Maisch any
12 questions about.

13 It consists of his responses to the
14 Attorney General's Data Request numbered 1.06, 1.07
15 and 1.13 and we will call this AG Cross-Exhibit 1,
16 and I will ask my colleague to distribute copies of
17 that to the various counsel, Your Honors, and to the
18 court reporter.

19 BY MR. DOSHI:

20 Q Mr. Maisch, I would like to ask you about a
21 statement in your testimony on Page 2 at Lines 24 to
22 29. There, you stated:

1 "Because the annual incentive
2 compensation costs described in ComEd's
3 direct testimony are based on the
4 achievement of operational metrics" -- then
5 you mention a few of the metrics -- "we did not
6 file direct testimony challenging these
7 costs."

8 Do you see that?

9 A Yes.

10 Q Can you confirm that as you stated at
11 Page 3, Line 51, you have not previously filed ICC
12 testimony?

13 A That is correct.

14 Q Prior to July of 2014, were you aware of
15 this ICC proceeding?

16 A Very vaguely. I, perhaps, had heard some
17 conversation, but did not have a great awareness of
18 it, no.

19 Q Did you review ComEd's direct testimony in
20 this proceeding prior to July 2014?

21 A I did not.

22 Q When and how did you first learn about the

1 proposal by the Attorney General witness regarding
2 incentive compensation in this proceeding?

3 A I would say it was on or around the 10th of
4 August.

5 Q Thank you.

6 And could you tell us how you learned
7 about it.

8 A I received a phone call from a
9 representative of ComEd that said I might be
10 receiving a phone call from our legal staff.

11 Q And did the ComEd personnel invite,
12 encourage or request you to intervene as a party and
13 file testimony in this case?

14 A We first discussed the issue at hand, and
15 to see if it was consistent with Chamber policies and
16 what they think are considered as probusiness
17 policies. And upon my review, I have expressed what
18 my opinion was and it was requested that we should
19 intervene.

20 Q Thank you.

21 And at this time, I would like to
22 introduce as AG Cross-Exhibit 2, the Illinois

1 Chamber's response to Data Request AG-ILCC 2.02.

2 Could you review that, Mr. Maisch.

3 A Yes, I have it here.

4 Q And if I can summarize your responses there
5 and you can confirm whether I've accurately
6 summarized them or not.

7 It sounds like you're saying that as
8 president and CEO of the Chamber, you determined in
9 your sole discretion to file your testimony in this
10 case; is that correct?

11 A I conferred with the representative of the
12 chairman of my Government Affairs Committee to see if
13 he was aware of any concerns they had and none were
14 reported back, so I thought it was a fairly and
15 simple straightforward policy decision that, yes, I
16 made, after making sure I did not hear back from my
17 Government Affairs Chair.

18 Q Okay. Thank you.

19 Did you consult any members companies
20 of the Chamber in the course of making that decision?

21 A That is a representative of the company is
22 the chair. So the Government Affairs Committee is

1 made up of representatives of member companies, so
2 consequently, the individual I spoke with was a
3 representative of a member company.

4 Q Okay. Thank you.

5 Could you tell us what which company
6 that was.

7 A I think it's generally known that
8 Caterpillar generally servings on our board of
9 directors and chairs our Governors Affairs Committee
10 Presently.

11 Q Okay. Thank you.

12 Do you know if any of the following
13 companies are members of the Illinois Chamber of
14 Commerce?

15 I'm going to list a few: Chrysler
16 Corporation, Abbott Laboratories, ExxonMobil Power &
17 Gas Services, General Iron Industries, Ford Motor
18 Company, Sterling Steel Company, Thermal Chicago
19 Corporation, and finally, AbbVie Inc.?

20 A I think that we generally treat that
21 information proprietary, but if directed to do so, to
22 the best of my knowledge, there are a few of those

1 companies that are listed on our website and other
2 members.

3 Ford Motor Company is actually
4 incoming chair of the Chamber. Abbott Labs is also a
5 member. Some of those other less household names, it
6 seems we have thousands of members, I would need to
7 double-check and see if they are current members.

8 Q Okay. Thank you.

9 If I could summarize, it sounds like a
10 few of those companies I mentioned are members of the
11 Chamber?

12 A Yes.

13 Q I mentioned those because those companies
14 are part of the coalition known as Illinois
15 Industrial Energy Consumers in this case.

16 Were you aware that some of your
17 member companies are members of that coalition?

18 A Certainly, yes.

19 Q Okay. Thank you.

20 Did you consult with any of those
21 companies before making your decision to file
22 testimony?

1 A Well, it is a belief that Caterpillar is a
2 member there, so I think that that would be
3 consistent.

4 However, again -- so Caterpillar, I do
5 believe is a member there.

6 Q Okay. Thank you.

7 The next Cross-Exhibit, I would like
8 to introduce is your response to the Data Request
9 No. AG-ILCC 1.17, so I guess this would be
10 cross-Exhibit 3.

11 Do you have that?

12 A 1.7?

13 Q That's correct.

14 A Yes.

15 Q So if I could summarize what you stated
16 there in your response, it sounds like ComEd made
17 annual membership dues payments of approximately
18 \$35,000 -- I say "approximately" because it was
19 37,000 one year in each of the last 4 years; is that
20 correct?

21 A I'm sorry. I thought you said 1.7.

22 Q I'm sorry. I said 1.17.

1 A Okay.

2 Well, I would say, obviously, the
3 information is here. I guess we should note that we
4 didn't think this was a relevant question, but, yes,
5 these are the correct numbers.

6 Q Okay. Thank you.

7 Now, the next cross-exhibit I would
8 like to introduce -- I mentioned this in an e-mail
9 this morning to your counsel. I hope she received
10 it. I'm not sure actually. It's the Illinois
11 Chamber of Commerce Membership Application.

12 Are you aware that we wanted to
13 discuss this?

14 A Yeah, I reviewed it, yes.

15 Q Okay. Thank you.

16 I will ask my colleague to distribute
17 this document as AG Cross-Exhibit 4.

18 Sir, do you have that in front of you.

19 A Yes.

20 Q Do you see where it says on the left side
21 and towards the middle of the page that for a company
22 with 500-plus employees, annual dues are \$11,000?

1 A Yes, I do.

2 Q So I'm wondering why ComEd gives annual
3 dues of 35,000 if the stated maximum dues appear to
4 be 11,000.

5 Can you explain that.

6 A Yeah, this is not the only document we use
7 in our broader membership program. This is one we
8 typically set up for a smaller membership.

9 Typically, people that come and visit
10 us online and then they consider joining just by
11 looking at our website and decide to join. They're
12 unlikely to do that at our website at the higher
13 levels.

14 But we, routinely, ask for and receive
15 membership dues in excess of \$11,000 to the point
16 where I would say that we have a dozen of members
17 that are above the \$11,000 members -- the 11,000
18 level.

19 Q Okay. Thank you.

20 How many members give at least \$35,000
21 per year in dues?

22 A I do not know for certain. It is multiple;

1 however, I don't know the exact number.

2 Q Is it more than ten?

3 A Like I said, I don't know the exact number.

4 Q Okay. Thank you.

5 Next, I would like to refer you to two
6 reports on the Illinois Chamber's website that I
7 mentioned to counsel this morning.

8 Do you have copies of those?

9 A I do. I'm familiar with them, but if I
10 need to review them, I will.

11 Q Thank you.

12 We're going to distribute two
13 Cross-Exhibits now. First is called Illinois Chamber
14 of Commerce Illinois report 2011. We will mark that
15 as AG Cross-Exhibit 5.

16 Then we're going to distribute to
17 counsel and to your Honors what we will call AG
18 Cross-Exhibit, which is labeled the Illinois Chamber
19 of Commerce chairman's report for 2010 to 2012.

20 Mr. Maisch, do you have those with
21 you?

22 A I do.

1 Q Okay. Thank you.

2 Now, in the -- first of all, can you
3 confirm that this annual report 2011 is the most
4 recent annual report available on your website as of
5 now?

6 A It is. I will tell you that these are
7 primarily communication devices to our members, so
8 they know what we did. They're also marketing
9 pieces, to be honest, as well.

10 So the consequently the daily reports,
11 there was a very active years, so we wanted to get a
12 special communication in front of the membership.

13 There is actually a more regular
14 communication, which is what we call chairman report,
15 which comes out every other year which coincides with
16 the election and retirement or changeover at the
17 chairman's level.

18 So the annual report we did here, we
19 call it annual report because it's a summary of
20 activity there and we wanted to get it out.

21 The chairman's report is the more
22 regular document that comes out.

1 Q Okay. Thank you.

2 Now, with respect to the 2011 annual
3 report, can you look at the picture on the 5th page
4 at the bottom.

5 A Yes, I see it.

6 Q Can you explain to us what exactly was
7 happening there in that picture.

8 A Yes, this is the annual event we've done in
9 the last three or four years. It's called the
10 LaSalle Energy Tour.

11 And every year we will invite, also
12 through stakeholders, legislators, key staff, people
13 from the environmental community, other members that
14 want to go ahead and attend.

15 But there is a unique conservancy of
16 energy-related aspects right there in LaSalle County
17 between a wind farm, a pipeline, as well as Exelon's
18 nuclear power plant.

19 So they will show up, take the whole
20 day, and tour each of those facilities, ask
21 questions.

22 So this is where they took the group

1 photo because it looks like it was a good location.

2 Q Thank you. That was very helpful.

3 Can you confirm that picture on the
4 fifth page represents the only corporate logo that
5 appears to be in this 2011 annual report, other than
6 the little TV news logos on the microphones in
7 Page 3.

8 A That is our logo, the only one. And as you
9 talked about on the TV, that's correct.

10 Q Thank you.

11 Can you then turn to the chairman's
12 report, 2010 to 2012. I'm actually not quite sure
13 about the page numbering.

14 A Yeah, I'm sorry about that.

15 Q That's okay. I believe towards the -- is
16 it towards the end. I'm sorry. Bear with me.

17 In the middle, I'm not quite sure what
18 the page number is, there is the same picture of the
19 Exelon nuclear plant. My colleague tells me it's
20 five sheets --

21 A I see it.

22 Q Oh, you found it. Okay. I can't find it

1 for some reason, but my colleague has it.

2 Can you confirm that in the chairman's
3 report, other than the array of corporate logos in
4 the key investors' page towards the end, that picture
5 of the Exelon plant is the only corporate logo that
6 appears in the chairman's report and besides the
7 little TV news logos?

8 A Other than the array of a couple dozens
9 other logos on the back page from key investors,
10 roughly, yes.

11 Again, I can only tell you that must
12 have been the best photos they snapped that day.

13 Q Thank you.

14 I have a couple further questions
15 related to the chairman's report.

16 Can you explain what a "key investor"
17 is.

18 A It is a -- I will be honest with you, it's,
19 again, another one of those things where we're
20 communicating to members at the same time that these
21 are, a lot of them are people who do make a
22 significant investment, not only in dollars, but also

1 by serving on the board of directors or stepping up
2 and serving leadership rolls we want to recognize.
3 It's a recognition of people that carry a lot of
4 water for us in a lot of different ways, including
5 revenue.

6 But it's also, again, is a marketing
7 notion that, hey, maybe their companies that are not
8 privy to this list that would like to see their logos
9 on it, so it really serves both those purposes.

10 Q When you said some of these companies --
11 let me back up.

12 Is it correct that you just said some
13 of these companies carry a lot of water for the
14 chamber?

15 A That contribute to our overall program to
16 help the business community, yes.

17 Q So would it be fair to say that these are
18 the greatest contributors, the key investors?

19 A Again, it's a somewhat subjective internal
20 discussion on who should be listed there or not. But
21 as I said, we consider the criteria that I kind of
22 put out there.

1 So there are, again, thousands of
2 chamber members, but there are -- like I said, a
3 number of these companies serve on our board of
4 directors and support us financially.

5 Q Okay. Thank you.

6 And do you have any idea why Exelon
7 Corporation is so prominently featured in your
8 publications?

9 A Well, the -- I can only tell you the
10 reference to the group photo that was part of one
11 photo taken on Energy Whole Day devoted to multiple
12 energy projects. Were happy to be associated with
13 Exelon and happy they're a member, but that is simply
14 a matter of fact that evidently for marketing
15 purposes that was the best photo that was taken that
16 day.

17 Exelon has been a member for ComEd for
18 decades, as well as dozens of other companies that
19 have been members for decades, and consequently, we
20 are made up of members, and recognizing a wide swap
21 of them as we do is entirely appropriate for
22 membership association like we are.

1 Q Okay. Thank you.

2 Does the Chamber have photo
3 opportunities like what we saw in that picture at
4 other company's facilities?

5 A There are. I'm certain that there are. I
6 was not in attendance on that day, but I think it's
7 very reasonable they probably took photos at many
8 places, but doing these things in the past, sometimes
9 you need wide open space, and here's a wide open
10 space for a group photo.

11 Q Okay. Thank you.

12 The next cross-exhibit I'm going to
13 introduce is set of your data request responses.
14 We're up to 7. Your set is your response to 1.08,
15 1.09, 1.10 and 1.12. And my colleague will
16 distribute those within the room here.

17 A Will you repeat those, so I can pull them
18 out.

19 Q 1.08, 1.09, 1.00 and 1.12.

20 Can you look at your response to 1.09.
21 You state -- the question was what do you believe
22 ComEd would do or how would ComEd respond if the

1 Commission hypothetically disallowed AIP expense
2 recovery.

3 And your response is you make no
4 contention as to how ComEd would respond; but
5 answering further: ComEd can do any of a number of
6 things, including removal the shareholder protection
7 feature.

8 Does that accurately summarize your
9 response on 1.09?

10 A Yes, I think that accurately reflects it.
11 And ComEd would have many options to consider.

12 Q Okay. Thank you.

13 And then if you can look at 1.08, you
14 state that Mr. Brosch's position on the incentive
15 compensation issue implies the result of -- referring
16 back to the question -- erasing the shareholder
17 protection feature.

18 Does that accurately summarize your
19 response?

20 A I believe so.

21 Q So does that mean --

22 A Let me go ahead and say, it was vague, but

1 in trying to be cooperative, we did try to elaborate
2 a little bit.

3 But, again, we did think this
4 particular question was, indeed, vague and ambiguous.

5 Q Okay. Maybe I'll ask it again in a more
6 clear fashion.

7 Do you believe Mr. Brosch is
8 seeking -- is quote: "Seeking to erase" as you
9 stated at Page 6, Line 126 of your testimony the
10 shareholder protection feature through his position
11 in this docket?

12 A Yes, that's correct.

13 Q You believe Mr. Brosch's proposal of
14 denying cost recovery would -- do you believe
15 Mr. Brosch's proposal for denying cost recovery for
16 AIP would cause ComEd to remove the shareholder
17 protection feature?

18 A They are two separate things. What
19 Mr. Brosch is attempting to accomplish and what ComEd
20 would actually do as a result are two separate
21 things.

22 I don't know what ComEd would do. It

1 is my belief that Mr. Brosch is seeking that outcome.

2 Q On what do you base your belief?

3 A If you insert -- let me refer back to my
4 testimony here.

5 Essentially, Mr. Brosch was asking to
6 disallow the full recovery for the whole program. I
7 think that's fairly straightforward.

8 Q Do you know whether Mr. Brosch is asking
9 the Commission to order ComEd to end the shareholder
10 protection feature?

11 A Well, Mr. Brosch's interpretation is that
12 because the limiter is in place in the Exelon
13 program, not in the ComEd program, and that the
14 statute does not allow for that, I think that's a
15 reasonable conclusion.

16 Q At your response to request AG-ILCC 1.10,
17 we asked:

18 "Do you know whether ComEd can
19 remove the shareholder protection
20 feature?"

21 And you stated you don't know; is that
22 correct?

1 A That's correct.

2 Q If you're unaware whether ComEd can remove
3 the shareholder protection feature, why do you
4 believe Mr. Brosch's proposal to disallow cost
5 recovery is intended to bring about removal of the
6 shareholder protection feature?

7 A Well, again, another two different entities
8 and two different questions.

9 The first is Mr. Brosch's intent, and
10 I stated what I believe it is. But then there is a
11 second action -- reaction, if you will, to it. I
12 don't have good insight into what that would be.

13 Q Okay. Thank you.

14 At your response to 1.12, you state
15 that your opinion is that Mr. Brosch's position
16 implies and could lead to the result of -- going back
17 to the question and quoting Lines 128, 129 from your
18 testimony on Page 7: "Dismantling annual incentive
19 compensation in its entirety."

20 Does that accurately characterize your
21 response to Data Request 1.12?

22 A I see my response.

1 Again, we struggled with it a little
2 bit, but wanted to be responsive. We do think it's a
3 little bit vague and ambiguous again.

4 But I think you're asking the same
5 question a different way, which is there is my
6 perception of what Mr. Brosch is attempting to ask
7 the Commission to do, and then there is my lack of
8 knowledge of what ComEd would do in response.

9 Q At 1.08, you stated that Mr. Brosch's
10 position implies the result of erasing the
11 shareholder protection feature, and in it, your
12 response to 1.12, you said that Mr. Brosch's position
13 implies the result of attempting to dismantle annual
14 incentive compensation in its entirety.

15 Which result do you think is more
16 implied if you have such a view?

17 A I don't know how to really accurately
18 characterize "more implied."

19 Q Which is more strongly implied by
20 Mr. Brosch's position, in your view?

21 A I think they are tied together to the point
22 where I would say they're equal.

1 Q Okay. Thank you.

2 Would you agree that those two

3 possible outcomes are mutually exclusive?

4 A I'm sorry?

5 Q Would you agree that the outcome you

6 alluded to at 1.08 of ending or erasing the

7 shareholder protection feature is mutually exclusive

8 to the possible outcome you alluded to at 1.12 of

9 dismantling annual incentive compensation in its

10 entirety, taking a quote from your testimony?

11 A Like I said, ComEd has multiple options on

12 the table of which I don't have very good insight.

13 So if one were to happen, there is a possibility that

14 the incentive package would go away. I don't have

15 good insight in that, so I don't see them as mutually

16 exclusive. I think one thing happening could cause

17 another.

18 Q So is it your view that if ComEd wanted to

19 remove the shareholder protection feature, then it

20 could not do so while also retaining the AIP program?

21 A Let me just take a moment here to make sure

22 I understand.

1 So your question is that if the
2 limiter were removed by the Commission, that ComEd
3 would automatically make changes to its AIP?

4 Q My question was:

5 If ComEd decided to remove its own
6 shareholder protection feature from the AIP, that
7 would also cause --

8 A There is a limiter in the ComEd AIP, so we
9 have two separate here.

10 Q Is it your view that if Exelon Corporation
11 decided to remove the shareholder protection feature
12 from ComEd's AIP, that would necessarily mean that
13 the entire AIP must also be dismantled in your words?

14 A It could be reworked subsequently, they
15 could keep it as is, they could repeal it. I don't
16 know.

17 Q Okay. Thank you.

18 I'm now going to introduce two
19 cross-exhibits that my colleague will distribute.
20 It's responses to Data Request AG-ILCC 1.05, which we
21 will call Cross-Exhibit 8.

22 And your response to Request AG-ILCC

1 21.4, which we will call AG Cross-Exhibit 9.

2 At 1.05, you state that the
3 shareholder protection feature in the Exelon AIP is
4 not a metric for the ComEd AIP.

5 Do you see that?

6 A Yes.

7 Q Can you define what you mean by "metric"?

8 A The shareholder price is not a metric that
9 is in the ComEd AIP.

10 Q Would you agree that the ComEd AIP
11 necessarily includes reference to EPS measures stated
12 in Exelon's AIP document?

13 A It's my understanding they're two separate
14 programs with their own metrics.

15 Q But would you agree that the shareholder
16 protection feature in the Exelon AIP necessarily
17 under the rules or corporate regulations -- I'm not
18 quite sure what the right term is -- of Exelon and
19 ComEd necessarily enters into the determination of
20 payouts under the ComEd AIP?

21 A Well, I think you're -- they're two
22 separate items with their own metrics.

1 And, again, there is the distinction
2 also between what is earned and actually paid, so in
3 your question I think you've got maybe two or three
4 issues wrapped up in there.

5 Q Would you agree that actual payouts under
6 the ComEd AIP necessarily must be calculated by
7 checking what Exelon Corporation's nongap earnings
8 per share was for a given year?

9 A My understanding is that once the ComEd AIP
10 is calculated and determined what is earned, not
11 paid, but earned, there is a separate program that
12 comes into place that applies to all Exelon
13 employees, which would include ComEd.

14 Q So you agree that the Exelon Corporation
15 shareholder protection feature applies to ComEd AIP
16 payouts?

17 A It applies to all employees of Exelon
18 Corporation.

19 Q Okay. Thank you.

20 Would you agree it applies to
21 subsidiaries of Exelon Corporation?

22 A I think you're saying it a different way.

1 I would contend, yeah, that all employees of Exelon
2 Corporation are subject to it.

3 Q Okay. Thank you.

4 Now, I would like to draw your
5 attention to Data Request 1.14, where you stated that
6 the Chamber takes no position as to whether ComEd
7 should or should not include the shareholder
8 protection feature as a limiter to the ComEd AIP.

9 Do you see that?

10 A There is multiple parts. Can you point --

11 Q I'm sorry. 1.14C.

12 A Okay.

13 Q You said: "The Chamber takes no
14 position as to whether ComEd should or
15 should not include the SPF" shareholder
16 protection feature "as a limiter to the
17 ComEd AIP."

18 Do you see that?

19 A Correct.

20 There again, there are two separate
21 entities. All employees of Exelon Corporation, no,
22 we don't have an opinion on whether it ought to be

1 also inserted into a separate AIP as well. We don't
2 have an opinion there.

3 Q Okay. Thank you.

4 Now, can I refer you to Page 4 of your
5 testimony, Line 84. There you state:

6 "The Illinois Chamber of Commerce
7 supports this limiter because it
8 ultimately serves to reduce the amounts
9 of incentive compensation otherwise to
10 be paid under ComEd's AIP."

11 And I think by the term "this
12 limiter," you were referring to the shareholder
13 protection feature under Exelon's AIP; is all that
14 correct?

15 A Yes, I think so.

16 Q So can you reconcile your statement at Line
17 84 of your testimony that the Chamber supports the
18 limiter with your response to Data Request 1.14C
19 where you said the chamber takes no position as to
20 whether ComEd should or should not include the SPF
21 limiter?

22 A Well, I think the distinction is it doesn't

1 really matter. If the Exelon limiter covers all
2 Exelon employees, we don't have an opinion on whether
3 it should be inserted somewhere else to apply a
4 second time with the same proposal.

5 So I think that we're talking here
6 about the ComEd employees, you know, being impacted
7 by a limiter, which they are. But from the Exelon
8 limiter, we don't have an opinion on whether it
9 should be in the ComEd -- where it should be or that
10 it should be added to the ComEd AIP.

11 Q In your testimony at Lines 84 and 85, it
12 sounds like you support the limiter because it
13 reduces actual payouts under the ComEd AIP; is that
14 correct?

15 A That is correct.

16 Q So would it be fair to say that you support
17 the inclusion of the shareholder protection feature
18 to limit sometimes, in certain years, depending on
19 EPS performance actual ComEd AIP payouts?

20 A We support the notion of the limiter
21 applying to those employees. We do not have an
22 opinion as to the structure, whether it covers under

1 Exelon's or ComEd.

2 Q Okay. Thank you.

3 So now I'm running longer on time than
4 we promised, so I will just ask a couple more
5 questions.

6 In Data Request AG-ILCC, 1.18, we
7 asked you if your website homepage shows ComEd's logo
8 among the key investors. And you said, yes. We
9 confirmed that; is that correct?

10 A That's correct.

11 Q And I have a follow-up question. We just
12 overlooked this in the data request.

13 Is it also true that Exelon's
14 Corporation logo appears on the website homepage
15 among the key investors?

16 A You know what, I do not know; although, I
17 would probably -- you know what, that is possible. I
18 don't know the answer.

19 Q Okay. Thank you.

20 MR. DOSHI: That's all my questions.

21 Thank you very much.

22 JUDGE HAYNES: You did not move to admit your

1 exhibits.

2 MR. DOSHI: Thank you, your Honor.

3 I would like to move for the admission
4 of AG Cross-Exhibits 1 through 9.

5 JUDGE HAYNES: Is there any objection?

6 (No response.)

7 Hearing none, they are admitted.

8 And did you provide the court reporter
9 with three copies of each?

10 MS. SATTER: No, but I will.

11 JUDGE HAYNES: Thank you. AG Cross-Exhibits 1
12 through 9 are admitted.

13 (Whereupon, AG Cross-Exhibits 1
14 through 9 were admitted into
15 evidence.)

16 JUDGE HAYNES: Any further questions for
17 Mr. Maisch?

18 (No response.)

19 Redirect?

20 MS. HAMMER: No redirect, your Honor.

21 JUDGE HAYNES: Thank you, Mr. Maisch.

22 (Witness excused.)

1 I see that Ms. Brinkman is up next for
2 2 hours.

3 Did we want to go ahead and start
4 that?

5 MR. RIPPIE: Your Honors, there is a couple of
6 options. One, we could put Mr. Garrido on, who is
7 shorter in time.

8 We could also, if your Honors don't
9 want to proceed in that respect, begin with Ms.
10 Brinkman with some of the shorter cross-examination
11 parties.

12 We prefer, obviously, not to break an
13 examination in the middle of one party's -- break for
14 lunch rather, in the middle of one party's
15 examination.

16 JUDGE HAYNES: Okay. So for Garrido, is the AG
17 ready to do that?

18 MS. SATTER: Yeah.

19 JUDGE HAYNES: Okay. I think that's a good
20 solution.

21 MR. STALKER: Good morning, your Honor. ComEd
22 calls Kevin Garrido.

1 JUDGE HAYNES: Good morning, Mr. Garrido.

2 THE WITNESS: Good morning.

3

4 (Witness sworn.)

5 KEVIN H. GARRIDO,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MR. STALKER:

11 Q Mr. Garrido, will you please state your

12 full name for the record.

13 A Kevin H. Garrido.

14 Q And what is your position with Commonwealth

15 Edison Company?

16 A Director of financial planning analysis.

17 Q Do you have before you ComEd Exhibit 5.0

18 and attached ComEd Exhibit 5.0, consisting of

19 19 pages of questions and answers?

20 A Yes, I do.

21 Q And that is your direct testimony in this

22 case?

1 A It is.

2 Q Was this testimony prepared by you or under
3 your direct supervision?

4 A It was.

5 Q Do you have any corrections to make to
6 Exhibit 5.0 or Exhibit 5.01?

7 A I do.

8 The first is on Page 6 of 19, Line
9 112, "relations" second to the last one in that line
10 should be "resources."

11 The next is on Page 13 of 19, Line 264
12 -- sorry -- Line 270, "5" should be "6." "6
13 related."

14 Page 18 of 19. It's an unnumbered
15 line, just above Line 372. This was previously
16 corrected in data request TEE 92.05. "Total
17 projected" should be changed to "actual."

18 Then on Page 19 of 19, just above Line
19 376, "total projected incremental 2013" should read
20 "2014."

21 Q Do you have any other corrections to make?

22 A No.

1 Q As corrected, if I were to ask you today
2 the questions that appear in Exhibit 5.0, would your
3 answers be the same?

4 A They would.

5 MR. STALKER: Your Honor, I move for admission
6 of 5.0 into the record and tender Mr. Garrido for
7 cross-examination.

8 JUDGE HAYNES: Is there any objection to
9 admitting ComEd Exhibit 5.0 with its attachment?

10 (No response.)

11 Hearing none, was this previously
12 filed on E-docket, did you say?

13 MR. STALKER: Yes, it was.

14 JUDGE HAYNES: On what day?

15 MR. STALKER: On April 16th in the direct phase
16 of the docket.

17 JUDGE HAYNES: Thank you.

18 As previously filed on E-docket, it's
19 admitted into the record.

20 (Whereupon, ComEd Exhibit 5.0
21 with its attachment was
22 admitted into evidence.)

1 JUDGE HAYNES: And I believe the AG has cross
2 for this witness.

3 MS. SATTER: Thank you.

4 CROSS EXAMINATION

5 BY

6 MS. SATTER:

7 Q Good morning. Susan Satter on behalf of
8 the People of the State of Illinois.

9 I have one question for you on Page 18
10 of your direct testimony Lines 166, 168, you talk
11 about BSC, business services company charges. And
12 you compare the 2013 charges to the charges for prior
13 years?

14 A Do you mean --

15 MR. STALKER: What page?

16 MS. SATTER: Page 8?

17 MR. STALKER: I thought you said Page 18.

18 And what was your line reference?

19 BY MS. SATTER:

20 Q The question is that you talk about
21 comparing the Exelon business services companies or
22 BSC charges for 2013 to those charges for prior

1 years, right?

2 A Correct.

3

4 Q Okay. And at Lines 166 through 168, you
5 talk about an average annual decrease between the
6 years 2009 and 2013, and then you also refer to the
7 period 2006 to 2013; is that right?

8 A That's correct.

9 Q Now, you reference the charges for specific
10 years in your testimony here, right?

11 A The charges beginning at Line 158, yes.

12 Q I'm going to mark the response to AG Data
13 Request 16.01 as AG Cross-Exhibit 10. And I would
14 like to ask that you take a quick look at that.

15 And my question is:

16 The Attachment 1 contains the -- Line
17 1, total located BSC costs for specified years; is
18 that right?

19 A That's correct.

20 Q It includes the cost for 2006, 2009, 2012
21 and 2013, right?

22 A Yes.

1 Q Did you not average the other years in your
2 average here?

3 A The average on Lines 160, between Lines 166
4 and 168 in my testimony is based on a compound annual
5 growth rate, which only considers the first year and
6 last year over a period of time.

7 Q Oh, so you didn't look at the specific
8 actual BSC charges for that period of time?

9 A I would say that the actual compound annual
10 growth rate is what I stated in my testimony.

11 Q Okay. But my question to you was:

12 Did you -- you did not use the actual
13 charges that the BSC charged to ComEd for those
14 periods?

15 A If you're asking, did I consider the years
16 not stated in this table?

17 Q Well, I'm asking you, when you say your
18 average annual change, you were not basing it on
19 actual charges to ComEd from the BSC?

20 A My calculation is based on the actual
21 charge. For example, between 2009 and 2013, the
22 average annual decrease was 2.4 percent on a compound

1 annual growth rate.

2 That contemplates 2009 of
3 238.5 million, and 2013 of 216.3 million.

4 Those were the actual charges, BSC
5 charges, adjusted for cost to achieve.

6 Q Okay. So you compared the actual 238.5 BSC
7 costs to the 2013, 2016, .3 annual costs and you got
8 to your .4 percent -- I'm sorry -- your 2.4 decrease;
9 is that correct?

10 A Correct.

11 Q Okay. And when you did the 2006, you
12 didn't look at what the variation of those charges
13 was from 2006 to 2007 to 2008 and 9, correct?

14 A No, I did not.

15 Q Okay.

16 A I did not state what the change was from
17 one year to the very next year.

18 Q Did you look at them?

19 A I may have.

20 Q Okay.

21 A I have access to that information, but I
22 don't recall contemplating that in this calculation.

1 Q This is a point-to-point. We don't really
2 know what is in between those points?

3 A Right.

4 A compounded annual growth rate only
5 contemplates the beginning and the ending points.

6 Q Do you have an explanation for why the
7 allocated cost in 2012 was -- I'm just testing my
8 arithmetic here -- \$47 million more or more than
9 20 percent more in 2009?

10 A Well, by looking at this, it would seem to
11 me that the 2012 includes some costs to achieve.

12 Q Okay. So on the Lines 2 and 3, are those
13 both costs to achieve?

14 A Yes.

15 Q When you say "cost to achieve" what exactly
16 do you mean?

17 A Cost to achieve merger-related savings. By
18 "merger" I mean the Constellation Exelon merger.

19 Q Okay.

20 MS. SATTER: Okay. I have no further
21 questions.

22 Also, I move to admit AG

1 Cross-Exhibit 10.

2 JUDGE HAYNES: Any objection to admitting AG

3 Cross-Exhibit 10?

4 (No response.)

5 It is admitted.

6 (Whereupon, AG Cross-Exhibit

7 No. 10 was admitted into

8 evidence.)

9 MS. SATTER: Yes, and at the break, we will

10 make sure there is three copies of everything because

11 some of the earlier ones may not have three copies.

12 JUDGE HAYNES: Great.

13 Is there any redirect?

14 MR. STALKER: One minute, your Honor.

15 No redirect, your Honor. Thank you.

16 JUDGE HAYNES: Thank you.

17 Thank you, Mr. Garrido.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 JUDGE HAYNES: So do you want to do another

21 short witness or go to lunch?

22 MR. BERNET: Mr. Wathen is here, if you want to

1 do him he should only be about 20 minutes.

2 JUDGE HAYNES: Is the AG prepared? If you want
3 to wait till after lunch, tell me.

4 MR. DOSHI: I would be happy to cross-examine
5 Mr. Wathen now, if that's amenable to everyone.

6 JUDGE HAYNES: I think so.

7 Good morning, Mr. Wathen.

8 THE WITNESS: Good morning.

9 JUDGE HAYNES: Please raise your right hand.

10 (Witness sworn.)

11 DAVID J. WATHEN,
12 called as a witness herein, having been first duly
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. BERNET:

17 Q Good morning, Mr. Wathen.

18 Would you please state your name and
19 spell your full name for the record.

20 A David J. Wathen; D-a-v-i-d, W-a-t-h-e-n.

21 Q And by whom are you employed?

22 A Towers Watson.

1 Q And what is your position there?

2 A I'm a director.

3 Q Have you offered written testimony in this

4 proceeding?

5 A Yes, I have.

6 Q Do you have what is before you previously

7 marked as ComEd Exhibit 20, which has been identified

8 as the rebuttal testimony of David Wathen?

9 A Yes, I do.

10 Q And attached to that is ComEd 20.01, which

11 is a two-page document?

12 A Yes.

13 Q And was that rebuttal testimony prepared by

14 you or at your direction?

15 A It was.

16 Q Is it true and correct to the best of your

17 knowledge?

18 A Yes, it is.

19 Q Are there any updates or modifications that

20 you need to make to this testimony?

21 A No, there are not.

22 Q So if I were to ask you the same questions

1 that are set forth in this document today, would your
2 answers be the same?

3 A Yes, they would.

4 MR. BERNET: Your Honors, these exhibits were
5 filed on E-docket on July 23, 2014 and bear the
6 E-docket Serial No. 216810.

7 I move for admission of ComEd Exhibits
8 20 and 20.01.

9 JUDGE HAYNES: Is there any objection?

10 (No response.)

11 Hearing none, ComEd Exhibits 20.0 and
12 20.01, as previously filed on E-docket are admitted
13 into the record.

14 (Whereupon, ComEd Exhibits 20.0
15 and 20.01 were admitted into
16 evidence.)

17 MR. BERNET: Mr. Wathen is available for
18 cross-examination.

19 JUDGE HAYNES: Thank you.

20 The Attorney General, go ahead.

21 MR. DOSHI: Thank you, your Honor.

22

1 CROSS EXAMINATION

2 BY

3 MR. DOSHI:

4 Q Good morning, Mr. Wathen. My name is
5 Sameer Doshi. I'm an attorney in the Attorney
6 General office. I have a few questions for you about
7 your testimony and some of the Data Request responses
8 that you provided.

9 If you don't mind, could we begin by
10 looking at Page 6 of your testimony at Line 127.

11 You state that:

12 "Our analysis concludes that ComEd
13 needs to maintain this component of
14 compensation" -- and I think you're
15 referring to short-term incentive
16 compensation -- "to maintain its market-
17 competitive payments."

18 Do you see that accurately describe
19 your testimony?

20 A Yes, it does.

21 Q So would you say that at the present time,
22 ComEd employee compensation, including the AIP

1 incentive payouts that are linked to particular KPI
2 achievements represents a market competitive pay mix?

3 A In that particular line, what I'm referring
4 to when I say "competitive pay mix" is the pay
5 components, so base salary and short-term at-risk
6 compensation.

7 So those components are very common
8 within the investor owned utility space, so that's
9 what I'm referring to when I say the "competitive pay
10 mix." I'm not referring to the competitive pay
11 levels or the dollars paid.

12 Q Do you have an opinion about whether
13 ComEd's pay levels at this time are market
14 competitive?

15 A I cannot specifically speak to that. I did
16 not do any analysis to that end.

17 Q Okay. Thank you.

18 Based on your experience as a
19 compensation consultant, if, hypothetically, two
20 utility companies with identical or very similar
21 circumstances had two identical or nearly identical
22 jobs and in Company A the salary promised was

1 \$100,000 dollars, just like that as a base salary,
2 and in Company B, the compensation promised was
3 \$70,000 base salary and \$30,000 attainable based on
4 the achievement of incentives, under that
5 hypothetical, which position, in your opinion, would
6 be more attractive to potential employees?

7 A I can't speak for employees.

8 But when you look at the aggregate
9 levels, the pay levels are the same. The difference
10 is on the one where you have base salary and then you
11 have the short-term at-risk component, that is a pay
12 mix which is more align with what we see in the
13 market for utilities.

14 Q You have no opinion about which position in
15 my hypothetical a typical prospective employee would
16 find more attractive?

17 A It depends what the risk adverse they may
18 or may not be.

19 If you think about someone taking on
20 the base salary and a short-term at-risk component,
21 that may be someone that's willing to take on that
22 risky opportunity with the opportunity of upside or

1 downside earning on that short-term incentive.

2 Whereas, the base salary, as you
3 described it, is what I would classify it as
4 essentially not at risk; it doesn't have that risk
5 component at play.

6 So I would say that it depends on the
7 individual. I can't speak to populous of potential
8 employees.

9 Q Based on your knowledge of the labor market
10 and your opinion as to human behavior, what
11 percentage roughly of prospective employees would
12 take the \$100,000 guaranteed base salary versus
13 70,000 base and 30,000 in potential incentive
14 compensation for two identical jobs?

15 MR. BERNET: Are you talking about employees
16 across the United States? Are you talking about
17 employees in Illinois?

18 MR. DOSHI: Let's say potential utility company
19 employees across the US.

20 MR. BERNET: I think the question has been
21 asked and answered.

22 JUDGE HAYNES: Sustained.

1 BY MR. DOSHI:

2 Q So, Mr. Wathen, you have no opinion about
3 the fraction of the labor market population that
4 would take the first job in my hypothetical versus
5 the second; is that correct?

6 MR. BERNET: Same objection.

7 JUDGE HAYNES: I agree that it is asked and
8 answered.

9 MR. DOSHI: Okay. I apologize.

10 BY MR. DOSHI:

11 Q Would it be fair to say that the company's
12 attainment of the KPIs in its AIP, with respect to
13 the defined targets, is not certain in any given
14 year?

15 A We're talking about ComEd?

16 Q I'm sorry. Yes, ComEd.

17 A Yes.

18 Q Okay. Thank you.

19 Would it also be fair to say that at
20 ComEd the at-risk component of employee compensation
21 does not provide a certain increase in employee
22 wages, but rather it increases the expected value of

1 employee wages?

2 A What do you mean when you say "expected
3 value"?

4 Q The expected value would be determined by
5 assigning probabilities to each component of the pay
6 mix and then summing the probablistic (sic) weighted
7 amounts?

8 A Could you reask your question, please.

9 Q Sure.

10 Would it be fair to say that at ComEd
11 the at-risk component of employee compensation does
12 not provide a certain increase in employee wages, but
13 rather it increases the expected value of employee
14 wages?

15 A I would say it does not -- the at-risk
16 component of compensation is not guaranteed, as you
17 noted.

18 It does provide an opportunity for
19 upside and downside opportunity depending on what
20 that performance is against the defined performance
21 measures.

22 Q How would ComEd's AIP represent a downside

1 to employee compensation?

2 A Well, in a typical short-term at-risk
3 compensation design, you have the participants in the
4 plan have a target opportunity. Some are
5 specifically defined as a percentage of base salary.

6 Then, based on that percentage, that
7 target opportunity, they have defined measures the
8 KPIs within the program, and then based upon
9 performance against those KPIs, they may earn some
10 percentage of that target opportunity, but the level
11 of performance whether above or below the defined
12 threshold target, maximum levels of performance
13 dictates what sort of level or opportunity is
14 actually earned.

15 So there is an opportunity to earn
16 more or less above and beyond that target
17 opportunity, such that you could earn nothing, if you
18 don't hit any of your goals.

19 Q Thank you.

20 Would you agree that the short-term
21 incentive compensation component of overall employee
22 pay will always be zero or positive? It would not be

1 negative?

2 A Correct, yes.

3 Q Okay. Thank you.

4 And prior to any given year, we cannot
5 know for certain what the company performance
6 multiplier, as defined in ComEd's AIP, will end up
7 being? It depends on the achievement of KPIs; is
8 that correct?

9 A Agreed.

10 Q Okay. Thank you.

11 Can you refer to Line 128 of your
12 testimony at Page 6.

13 You state that:

14 "Eliminating this at-risk
15 compensation component would result
16 in a pay mix that is not competitive
17 with utility peers."

18 When you refer to eliminating the
19 at-risk component, do you mean that the amount of
20 salary that is at risk would be entirely deleted from
21 pay and not replaced with base salary? Is that what
22 you mean?

1 A My assumption on that particular line is if
2 the short-term, at-risk plan were eliminated, then
3 not having that pay component as part of the mix at
4 ComEd, so all you had was base salary, would not be a
5 competitive pay mix versus other investor-owned
6 utilities.

7 Q Under that assumption, would base salary be
8 increased after elimination of the at-risk component?

9 A I don't know what action ComEd may or may
10 not do relative to that, but that's a possibility.

11 Q Is it possible that, hypothetically, if the
12 at-risk component were eliminated and base salary
13 then increased to a sufficiently high level, then the
14 new resulting pay mix could be equally or more
15 attractive to prospective employees than before?

16 A Well, I think that gets back to a prior
17 question, and it really is dependent on the
18 individual and are they risk adverse or not, so it
19 may be a possible outcome, but it just is employer or
20 candidate dependent.

21 Q Okay. Thank you.

22 Do you agree that whether ComEd's

1 shareholder protection feature will operate to reduce
2 actual AIP payouts cannot be predicted with certainty
3 at the beginning of any given year?

4 A Yes.

5 Q Would you agree that in recent years
6 ComEd's shareholder protection feature has sometimes
7 operated to reduce AIP payouts, but sometimes not?

8 A That is my understanding, yes.

9 Q Given that uncertainty that we just
10 discussed, would it be fair to say that the existence
11 of ComEd's shareholder protection feature reduces the
12 expected value of ComEd employee compensation
13 relative to a scenario -- a hypothetical scenario
14 where there was no shareholder protection feature?

15 MR. BERNET: I will object to the
16 characterization of "ComEd's shareholder protection
17 feature." There is no such thing.

18 MR. DOSHI: I will rephrase the question.

19 BY MR. DOSHI:

20 Q Given the uncertainty that we discussed,
21 would it be fair to say that the existence of the
22 shareholder protection feature reduces the expected

1 value of ComEd's employee compensation compared to a
2 hypothetical scenario with no shareholder protection
3 feature?

4 A Yes.

5 The shareholder protection feature
6 serves to limit or potentially reduce the annual
7 incentive plan payout.

8 Q Thank you.

9 In light of your last response, would
10 you say in existence of a shareholder protection
11 feature results in a pay mix for ComEd employees that
12 is not competitive with utility peers?

13 A Again, when I'm referring to pay mix, I'm
14 referring to the pay components.

15 So, again, a base salary component
16 then a short-term at-risk component, not looking at
17 the pay levels.

18 So in order to answer that question,
19 we would have to do analysis on a
20 position-by-position basis of what base salary and
21 short-term at-risk incentive opportunities were.

22 Q Okay. Thank you.

1 At this time, I would like to
2 introduce a Cross-Exhibit, which is AG
3 Cross-Exhibit 11, which consists of Mr. Wathen
4 responses to AG Data Request Nos. 9.12, 9.13, 9.14
5 and 9.15.

6 Mr. Wathen, do you have that for
7 those?

8 A Yes.

9 Q Thank you.

10 Please look at your response to our
11 Data Request 9.15C. Our question was:

12 "Does Mr. Wathen or ComEd believe
13 that the likely result of the Commission's
14 eliminating cost recovery for the ComEd
15 AIP, based on Mr. Brosch's proposal, would
16 be termination of the ComEd AIP?"

17 And your response was:

18 "Towers & Watson states that it
19 was not asked to render an opinion on
20 the possible results that may occur
21 following any actions of the Commission
22 in this proceeding."

1 Does that accurately describe your
2 response to the question?

3 A Yes, it does.

4 Q So just to be clear, you have no opinion
5 about whether the hypothetical Commission
6 disallowance of ComEd AIP expense recovery would
7 cause ComEd to cancel the AIP?

8 A I do not know.

9 I mean, there are a course of actions
10 that ComEd might take. I don't know what they might
11 do.

12 Q Okay. Thank you.

13 Now, can you refer to your response to
14 our Data Request 9.13. You referred to your
15 testimony at Page 9, Line 167 in our question where
16 you stated in the testimony:

17 "Our search indicates that
18 limiters or modifiers such as the
19 design feature here are found in
20 investor-owned utility short-term
21 incentive plans.

22 "These modifiers can be structured

1 to allow for an adjustment either upward
2 or downward of the incentive award earned."

3 For your response, you provided a
4 table with 19 peered utility companies.

5 And in the table, it appears that
6 three of them have a modifier; is that correct?

7 A That is correct.

8 But I will note that, again, the data
9 source is proxy disclosures or public statements.
10 And what you will find is that the data disclosure
11 can vary from company to company as to the level of
12 detail they may provide, but based on the disclosure,
13 there were three.

14 Q Okay. Thank you.

15 And looking closer at the table, it
16 appears that CMS Energy has a modifier based on
17 operating and strategic measures, and Wisconsin
18 Energy has a modifier based on operating performance,
19 supplier in workforce diversity and safety.

20 Are those two statements correct?

21 A Yes, they are.

22 Q And in your table, it looks like one

1 company out of the 19 reviewed has a feature in its
2 incentive plan where a committee may be that's a
3 board committee, I'm not sure, can subjectively
4 modify awards based on shareholder value creation,
5 customer service, financial strength, operating
6 performance and safety; is that correct?

7 A Yes, it is.

8 Q So just to sum up, your review of the proxy
9 information shows that one out of the 19 peered
10 companies has as modifier based on financial metrics;
11 is that correct?

12 A That is correct, yes.

13 Q Okay. Thank you.

14 Can you refer to your testimony on
15 Page 5 at Lines 89 through 93, where you describe
16 your career at Towers Watson as a compensation
17 consultant.

18 Did ComEd engage you or Towers Watson
19 in the design of the AIP at any past time?

20 A I was not engaged, but my understanding is
21 Towers Watson has provided consultation assistance in
22 past years.

1 Q All right. Thank you.

2 And if you're aware, at that time
3 where your firm, Towers Watson, provided compensation
4 consulting to ComEd, was Towers Watson aware that the
5 Illinois Public Utilities Act forbids recovery of
6 incentive compensation expense that is based on a
7 corporate affiliate's earnings per share?

8 MR. BERNET: Are you talking about since 2011?

9 MR. DOSHI: Yes.

10 THE WITNESS: My understanding is the last time
11 Towers Watson did consulting work for ComEd or for,
12 actually, for Exelon was back in 2011, to the best of
13 my understanding.

14 So I don't know the answer to your
15 question, specifically.

16 BY MR. DOSHI:

17 Q Okay. Thank you.

18 I would like to refer again to the
19 Data Request. In 9.14 -- in your response to 9.14,
20 you state that -- I'm sorry. I meant 9.15.

21 In 9.15B in your response, you state
22 that if the Commission were to eliminate the ComEd

1 AIP, a possible outcome would be the shifting of a
2 short-term incentive-compensation to base salary in
3 order to maintain market competitive pay levels?

4 MR. BERNET: I'm sorry, Counsel, which subpart?

5 MR. DOSHI: 9.15B, as in boy.

6 BY MR. DOSHI:

7 Q Do you see that, Mr. Wathen?

8 A Yes, I do.

9 Q And in 9.15D, as in David, in your response
10 you state -- or rather I should refer to the
11 question.

12 The question was:

13 "Does Mr. Wathen or ComEd believe
14 that a result of the Commission's
15 eliminating cost recovery for the ComEd
16 AIP, based on Mr. Brosch's proposal can
17 be removal of the existing shareholder
18 protection feature from the ComEd AIP."

19 AND your response was in Part D, as in
20 David:

21 "Towers Watson states that it was
22 not asked to render an opinion on the

1 possible results that may occur following
2 the actions of the Commission."

3 Do you see that?

4 A Yes, I do.

5 Q So in Part B, as in Bravo, your response is
6 that a possible outcome could be -- a possible
7 outcome of the Commission disallowing recovery of AIP
8 costs would be shifting of short-term
9 incentive-compensation to base salary.

10 But in Part D, as in David, when we
11 asked, is it possible outcome removal of the
12 shareholder protection feature, you said you were not
13 asked to render an opinion.

14 So how are you able to give the answer
15 you gave in Part B, where you suggested the possible
16 outcome, if you don't have an opinion?

17 A On Part B, I made the assumption that if
18 short-term at-risk compensation were eliminated a
19 likely move would be to increase base salaries.

20 Q And what is your basis for that belief?

21 A The assumption on my part is many
22 possibilities that ComEd might pursue.

1 Q Okay. Do you believe a possibility
2 following hypothetical disallowance of AIP expense
3 could be that ComEd would remove the shareholder
4 protection feature?

5 A It could be one of many design changes that
6 they make, yes.

7 Q Okay. Thank you.

8 Did your analysis of utility peers
9 evaluate or address whether the incentive plan costs
10 were allowed or partially or completely disallowed in
11 the various states utility commissions?

12 A No, it did not.

13 Q Okay. Thank you.

14 As a compensation expert, are you
15 aware of whether other states utility commissions
16 have disallowed incentive pay plans based on
17 financial performance?

18 A It is my understanding that there are some
19 states that have.

20 Q Do you know off the top of your head any
21 such states?

22 A I couldn't cite with specific accuracy, but

1 I do know that there are some that have.

2 MR. BERNET: Are you asking on the basis of
3 operational metrics or financial metrics?

4

5 BY MR. DOSHI:

6 Q My question was:

7 Are you aware of whether other state
8 utility commissions have disallowed incentive pay
9 plans based on financial performance?

10 A It is my understanding, that, yes, they
11 have.

12 Q I have one final question.

13 Throughout your testimony, you used
14 the term "market competitive," can you define that
15 term.

16 A In the compensation consultive world
17 "market competitive" typically refers to what the
18 utility or company would define as their competitive
19 pay or market position; so what level of pay or what
20 universe you compare your pay programs against.

21 More commonly, within an
22 investor-owned utility space, most utilities will say

1 they compare or target the market median at the 50th
2 percentile for pay or they target their plan designs
3 to align with what the predominant practices are of
4 for a peer utility.

5 Q So when you refer to a "market competitive
6 pay mix," would it be fair to say you're referring to
7 the pay mix that most of the peer companies are
8 offering?

9 A Yes.

10 Q And you're not referring to -- would it be
11 fair to say that you're not referring to the concept
12 of a pay mix required to compete with other peer
13 utilities for prospective employees?

14 A There is the competitive market for what I
15 will say is pay design, and then pay level.

16 So it would be -- you would be looking
17 at both.

18 So what is the level of pay that you
19 target against market and what is the competitive
20 design aspects, what pay components or benefit
21 components might you have, so it should cover both.

22 Q So does the term "market competitive pay

1 mix" consider a prospective employee's decision
2 process?

3 A I would say in most cases, it's taking into
4 consideration the competitive market of what utility
5 peers are doing, and understanding what they're doing
6 and where they're -- and what levels they're paying.

7 We don't have an ability to capture
8 what a prospective employee may or may not want.

9 Q Okay. Thank you.

10 MR. DOSHI: That's all my questions,
11 Mr. Wathen. Thank you very much.

12 JUDGE HAYNES: Is there any redirect?

13 MR. BERNET: No redirect.

14 JUDGE HAYNES: Thank you.

15 Thank you, Mr. Wathen.

16 (Witness excused.)

17 I have Cross-Exhibit 11 was not moved
18 into the record.

19 MR. DOSHI: I would like to move for the
20 admission of AG Cross-Exhibit No. 11.

21 JUDGE HAYNES: Any objection?

22 MR. BERNET: No objection.

1 JUDGE HAYNES: AG Cross-Exhibit 11 is admitted.
2 (Whereupon, AG Cross-Exhibit 11
3 was admitted into evidence.)
4 JUDGE HAYNES: And I believe it's lunchtime.
5 (Whereupon, a lunch recess was
6 taken.)
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1 (Change of reporters.)

2 JUDGE HAYNES: Is ComEd ready?

3 MR. RIPPIE: Your Honors, the Petitioner calls

4 Miss Christine Brinkman.

5 JUDGE HAYNES: Good afternoon. Please raise

6 your right hand.

7 (Witness sworn.)

8 CHRISTINE BRINKMAN,

9 called as a witness herein, having been first duly

10 sworn, was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY

13 MR. RIPPIE:

14 Q Could you please state and spell your full

15 name for the court reporter.

16 A Christine M. Brinkman, C-h-r-i-s-t-i-n-e,

17 M. Brinkman, B-r-i-n-k-m-a-n.

18 Q Ms. Brinkman, have you prepared or caused

19 to be prepared under your direction and control

20 direct testimony for submission to the Illinois

21 Commerce Commission in this proceeding?

22 A I have.

1 Q Is that document the document that has been
2 identified as Commonwealth Edison Exhibit 2.0 for
3 identification?

4 A Yes.

5 Q And is that document accompanied by seven
6 exhibits numbered 2.01 through 2.07 and subexhibits
7 to 2.07 numbered 2.07-APO-1 through 2.07-APO-12?

8 A Yes.

9 Q Miss Brinkman, do you have any additions or
10 corrections to make to Exhibit 2.0?

11 A Just a couple of updates. So on Page 12
12 and 13 at Lines 248 to 254, I speak of the appeal in
13 ICC Docket No. 13-0553 related to the weighted
14 average cost of capital gross-up for income taxes.
15 At the time of filing this was accurate. However,
16 it's my understanding at this point that ComEd has
17 withdrawn this appeal.

18 Then on Page 18 on Line 379, the word
19 "performance" as it references EIMA's performance
20 metrics index, it should be EIMA reliability metrics
21 index.

22 And I have that same correction on

1 391. Instead of "performance," it should say
2 "reliability" and that's all.

3 Q And with the exception of that update and
4 those two corrections, if I were to ask you the same
5 questions that appear on Exhibit 2.0, would you give
6 these same answers to the Commission today?

7 A I would.

8 MR. RIPPPIE: Your Honors, that document was
9 filed on 4/16/14. It comprises 48 pages of narrative
10 testimony together with the 19 exhibits and it's
11 filing docket number was 212995.

12 Would your Honors prefer that we file
13 an e-Docketed version with those two corrected words
14 or is it sufficient on the record?

15 JUDGE HAYNES: I think what you said on the
16 record is sufficient.

17 MR. RIPPPIE: Thank you.

18 BY MR. RIPPPIE:

19 Q Miss Brinkman, did you prepare or cause to
20 have prepared under your direction and control
21 revised rebuttal testimony for submission to the
22 Commission in this docket?

1 A I did.

2 Q Is that document the document designated
3 ComEd Exhibit 12.0 Rev, R-e-v for identification?

4 A Yes.

5 Q And is it accompanied by five exhibits
6 numbered 12. 01 Rev, 12.02 and 12.02 through 12.05?

7 A Yes.

8 Q Do you have any additions or corrections to
9 make to the exhibit or its attachments?

10 A No.

11 Q If I were to ask you the same questions
12 that appear in ComEd Exhibit 12.0 Revised, would you
13 give the Commission the same answers today?

14 A Yes.

15 MR. RIPPIE: Your Honors, that document
16 consists of 45 narrative pages together with the five
17 exhibits. The originals were filed on 7/23/14; the
18 revised versions of 12.0 and 12.01 were filed on
19 8/12/14. The originals had the serial number of
20 216810 and the revised documents were 217581.

21 BY MR. RIPPIE:

22 Q Ms. Brinkman, finally, did you prepare

1 pre-filed surrebuttal testimony or cause it to be
2 prepared under your direction and control for
3 submission to the Commission in this proceeding?

4 A Yes.

5 Q Is that the document marked ComEd Exhibit
6 25.0 for identification?

7 A Yes.

8 Q And is it accompanied by four exhibits
9 numbered 25.01 through 25.04?

10 A Yes.

11 Q If I -- do you have any additions or
12 corrections to make to 25.0 ComEd -- Exhibit 25.0 or
13 its attached exhibits?

14 A No.

15 Q If I were to ask you the same questions as
16 appear in the narrative of ComEd Exhibit 25.0, would
17 you give the Commission these same answers today?

18 A Yes.

19 MR. RIPPIE: Your Honors, that document
20 consists of 34 narrative pages together with the four
21 exhibits as filed on 8/21/14 under Serial No. 218041.

22 I would offer into evidence

1 Commonwealth Edison Exhibit 2.0 through 2.07 and
2 2.07-APO 1 through APO-12; Commonwealth Edison
3 Exhibit 12.0 Revised, 12.01 Revised and 12.02 through
4 12.05; and Commonwealth Edison Exhibit 25.0 through
5 25.4.

6 JUDGE HAYNES: Is there any objection to
7 admitting those ComEd exhibits into the record?

8 (No response.)

9 Hearing none, they are admitted.

10 (Whereupon, Commonwealth Edison
11 Exhibit Nos. 2.0 through 2.07,
12 2.07-APO 1 through APO-12,
13 Exhibit 12.0 Revised, 12.01 Revised
14 and 12.02 through 12.05 and
15 Exhibits 25.0 through 25.4 were
16 admitted into evidence.)

17 MR. RIPPPIE: I have no further questions for
18 Miss Brinkman. She is available for
19 cross-examination.

20 JUDGE HAYNES: Thank you. Who is going first?

21 MS. CARDONI: Staff is going to go first.

22 JUDGE HAYNES: Okay.

1 CROSS-EXAMINATION

2 BY

3 MS. CARDONI:

4 Q Good afternoon, Miss Brinkman.

5 A Good afternoon.

6 Q Jessica Cardoni for Staff. I think it will
7 not surprise you to learn that I would like to
8 discuss incentive compensation today. So all my
9 questions today will be about incentive compensation.

10 A Okay.

11 Q ComEd has three incentive compensation
12 programs; correct?

13 A Correct.

14 Q In the main program is the Annual Incentive
15 Plan or AIP; correct?

16 A What do you mean by "main program"?

17 Q The AIP is the only plan that all
18 Commonwealth Edison employees are eligible for;
19 correct?

20 A I believe that's correct.

21 Q Now, ComEd has two other programs: The
22 Long-Term Performance Share Award Programs and the

1 Long-Term Performance Program; correct?

2 A That's correct.

3 Q Would you agree that no ComEd employee is

4 eligible for all three of those programs?

5 A That's correct.

6 Q But a ComEd employee could be eligible for

7 two of them; correct?

8 A That's correct.

9 Q Okay. I'd like to focus solely on the AIP

10 for the rest my cross day.

11 A Okay.

12 Q If you could turn to your direct testimony,

13 Line 336.

14 A Okay.

15 Q You state, ComEd implements a pay at risk

16 approach under which ComEd's employees are at risk of

17 receiving less than a marketplace level of

18 compensation if the metrics of the plan are not

19 achieved; correct?

20 A Correct.

21 Q Now, your testimony is based on the fact

22 that a portion of every employee's market salary is

1 at risk; correct?

2 A Correct.

3 Q So, for example, let's just say that there

4 was an IT employee and 80 percent of their salary was

5 base salary, that would mean that 20 percent of their

6 salary would be at risk, correct, under that

7 scenario?

8 A In your scenario, yes.

9 Q Okay. Is your testimony at Line 336 that

10 unless ComEd's employees receive AIP, they don't

11 receive marketplace compensation?

12 A My testimony is that ComEd employees are at

13 risk of receiving less than a marketplace level of

14 compensation if the metrics under the AIP Plan is not

15 achieved.

16 Q Because that at risk component kind of

17 makes their salary whole; correct?

18 A That's correct.

19 Q So in our example of the

20 80 percent/20 percent, the 20 percent at risk portion

21 is the part that would be dependent upon the

22 Incentive Compensation Program; correct?

1 A In your example, that's correct.

2 Q Okay. And then you state at Line 339, So

3 understood, the Incentive Compensation Programs paid

4 under these plans should not be construed as some

5 form of bonus or additional compensation; correct?

6 A That's correct.

7 Q Okay. So what you're saying here -- and

8 I'm not trying to be repetitive -- but you're saying

9 that AIP is not a bonus; correct?

10 A Correct.

11 Q Okay. What if the AIP payouts result in

12 higher than the marketplace level of compensation?

13 Would you consider that to be a bonus?

14 A Because the pay is at risk, it's all one

15 plan. I would characterize that as employees can

16 make above market amounts --

17 Q Okay.

18 A -- if the metrics that they have earned

19 calculate such that it is paid above target, which

20 would also mean that they have worked to metrics

21 above target.

22 Q Okay. But but you wouldn't characterize

1 that as a bonus?

2 A I wouldn't.

3 Q Okay. So let's do a little hypothetical

4 here. Let's say that I work for ComEd and my salary

5 is \$100,000 and using my example above, let's say

6 that 80 percent of my salary is base salary and

7 20 percent is at risk, so 80 -- \$80,000 is my bass

8 salary and I have \$20,000 at risk; correct?

9 A In your example, yes.

10 Q My complicated mathematical example.

11 Let's say at the end of the year I

12 make \$140,000, would you consider that \$40,000 a

13 bonus? And to make that question clear, the \$140,000

14 consists of my base salary and my AIP award that I

15 received.

16 So to rephrase, would you consider

17 that 40,000 above 100,000 to be a bonus?

18 A No, I would characterize that full AIP

19 award as your pay at risk.

20 Q Okay. Now in your testimony, you state

21 that ComEd employees earn AIP. Would you agree with

22 that statement?

1 A I believe I state that a few times, yes.

2 Q Okay. Is it your belief that if AIP is

3 earned is that award bankable? And what I mean by

4 that question is, if I earn AIP at the end of the

5 year -- a year, and the limiter is imposed and I

6 don't receive that amount earned, can I get that

7 award next year if the AI -- if the limiter is not

8 imposed?

9 A When you say "that award," what do you

10 mean.

11 Q Well, let's say that I earned -- that my at

12 risk pay was 20,000 and I -- let's say that the award

13 at the end of the year that was earned -- because of

14 the KPIs -- was 30,000; but let's say the limiter

15 operated such that I didn't get that 30,000, can I

16 try to get that 30,000 the following year or does the

17 award disappear at the end of 2013?

18 A So -- I'm sorry, just to make sure I

19 understand your example.

20 Q Mm-hmm.

21 A So the award earned 30,000 --

22 Q Mm-hmm.

1 A -- are you saying that they've gotten
2 nothing or that the limiter --

3 Q Let's say that the limiter was imposed and
4 the employee -- and no employee received AIP.

5 A Okay. No, that's not bankable, it's just
6 gone for the year.

7 Q Okay. Thank you.

8 Do employee salaries get recalibrated
9 the next year to include that incentive compensation
10 payment?

11 A I am not aware that they do. However, I'm
12 not in the Compensation Department.

13 Q Okay. So -- and maybe you've answered
14 this, but if I took home 140,000 based on that
15 example earlier and let's say I took that home in
16 2013. In 2014, would my new salary be considered
17 140,000 and 80 percent would be base and 20 percent
18 would be at risk?

19 A No. Using your hypothetical, once 2013 is
20 done, it's done --

21 Q Okay.

22 A -- and in the new year, you would still

1 make your base salary, you know, perhaps with a merit
2 increase and assuming you didn't get a promotion and
3 all those types of things --

4 Q I would, I think.

5 A -- and then depending on the AIP Plan for
6 that new year --

7 Q Okay.

8 A -- would determine your pay.

9 Q Okay. Thank you.

10 I want to switch to your rebuttal
11 testimony and focus your attention on Line 132.

12 A Okay.

13 Q You state, While labeled the shareholder
14 protection feature, it could, in a given year, result
15 in significant benefits for customers.

16 Other than reducing the overall payout
17 of AIP if the earnings for share are low, how does
18 the SPF result in significant benefits for customers?

19 A Well, taking a year like 2013 where the SPF
20 was invoked, ComEd employees worked the operational
21 and cost control metrics at above target --

22 Q Right.

1 A -- on those metrics.

2 So there was, you know, above target
3 almost distinguished performance on many of those
4 metrics; but the limiter decreased the payout. So
5 customers got the benefit of that operational and
6 cost control work, but paid less for that.

7 Q Okay. And then right underneath that
8 section, you ask a question at Line 140 and you
9 say -- you ask, Has ComEd taken steps to ensure that
10 employees understand that their focus should be on
11 the eight operational metrics?

12 That's the question that you posed;
13 correct?

14 A That's correct.

15 Q Okay. And then your answer is, Yes. But
16 you cite to Mr. Brosch's testimony which states,
17 Employees participating in the ComEd KPIs do not have
18 Exelon EPS as a performance measure, but are subject
19 to the EPS shareholder protection feature.

20 I guess I don't understand. How does
21 the fact that ComEd KPIs are subject to the EPS
22 shareholder protection feature ensure that employees

1 focus on the KPIs?

2 A What I'm trying to say here is in the plan,
3 we have two brochures. We have the Exelon brochure
4 and the ComEd brochure. And the ComEd brochure
5 states all of the operational -- operational cost
6 control metrics. In Mr. Brosch's testimony, I
7 believe he referred to employees participating in the
8 ComEd Plan, KPIs do not have EPS as a performance
9 measure, but are subject to the shareholder
10 protection feature. So what I was trying to say
11 there is ComEd employees understand that EPS is not a
12 performance measure, the cost control and operational
13 metrics are; and, you know, by listing that in that
14 Exelon brochure very clearly -- I believe it's in a
15 note in the Exelon brochure -- that EPS is not a
16 performance measure, employees understand that they
17 should be operating to the operational and cost
18 control metrics.

19 Q Well, do the employees understand that
20 ultimately their performance would be limited by the
21 shareholder protection feature despite that
22 exceptional performance?

1 A Well, the shareholder protection feature is
2 not a guarantee. It may or may not limit in a given
3 year.

4 Q Do the employees think that's fair?

5 A I can't speak for 6,000 employees.

6 Q Well, you said that -- right above that
7 employees understand their focus should be on the
8 eight operational metrics. So you -- you believe
9 that the employees understand they need to focus on
10 the metrics?

11 Do you believe the employees are fine
12 with the EPS limiter that might ultimately take their
13 performance away?

14 A So above I say, Has ComEd taken steps to
15 ensure. I don't believe that I say, Employees
16 absolutely do understand. We've taken steps to try
17 to ensure that employees understand --

18 Q Okay.

19 A -- but I can't speak to what each
20 individual employee does or doesn't understand.

21 Q Well, you receive incentive compensation;
22 correct?

1 A Correct.

2 Q Okay. So a portion of your salary is at
3 risk as well; isn't that correct?

4 A That's correct.

5 Q Okay. And if you work hard all year and
6 your peers work hard all year and the AIP award is
7 high that's earned, you might not get anything of
8 your at risk pay; correct?

9 A That's the definition of at risk pay, yeah.

10 Q Do you think that's fair?

11 A I think it's an AIP Plan. I think it's a
12 compensation structure that I know about, I've
13 accepted in my job at ComEd.

14 Q Okay. Could you turn to your surrebuttal,
15 specifically Line 40.

16 A Okay.

17 Q You testify ComEd's AIP is earned based on
18 operational metrics. Earnings per share are
19 considered only in the calculation of the payout of
20 the award; is that correct?

21 A That's correct.

22 Q And you stated earlier that all of ComEd's

1 employees are eligible for AIP; correct? You stated
2 earlier during this cross-examination.

3 A Yeah, I think that's right. What I didn't
4 indicate -- and this is just a note -- that, you
5 know, they're -- depending on grades and things like
6 that -- performance grades, that will change.

7 Q Well, conveniently I'm about to ask you
8 about that. So...

9 A Okay.

10 Q When you say all employees are eligible for
11 AIP, that includes the nonunion ComEd employees as
12 well as those that are operating under a Collective
13 Bargaining Agreement; correct?

14 A That's correct.

15 Q Okay. Does the individual performance of
16 an employee have an impact on the AIP received during
17 the year it's paid out?

18 A Yes.

19 Q Okay. So if, in 2013, my performance was
20 poor, my 2013 AIP payout would reflect that; correct?

21 A What do you mean by "poor?"

22 Q Below average. So if I can take a moment

1 there, in the ComEd brochure --

2 Q Yeah. Mm-hmm.

3 A -- there are individual grades that are

4 referenced.

5 Q Right. And I think it's -- you can

6 certainly get there, but I think it's -- you can get

7 a Grade A, A minus, B?

8 A A, B, B plus, B minus or a C.

9 Q Yes. But not below a C; correct?

10 A That's correct.

11 Q So if I got a C, which appears to be the

12 lowest --

13 A Mm-hmm.

14 Q -- would my AIP payout reflect that?

15 A Yes.

16 Q Okay. Is individual performance taken into

17 consideration for the collective bargaining

18 employees?

19 A No.

20 Q Okay. So if I was a below-average employee

21 in 2013 or a poor performing employee in 2013, I

22 still earned 140.4 percent of AIP; isn't that

1 correct?

2 A Not necessarily.

3 Q And why not?

4 A Well, if you were a below-average -- and if

5 I can just assign a grade, let's say are you a

6 B minus --

7 Q Okay.

8 A -- the formula for calculating the AIP

9 would be your salary times the amount that is given

10 to your grade times the Company multiplier, but if

11 you're a B minus, that individual multiplier could be

12 less than 100 percent.

13 Q But what if you're union employee?

14 A For a union employee, then, that individual

15 multiplier would not be taken into account, so then

16 yes, you would get 140.

17 Q And just to rephrase, even if I was a poor

18 employee, I would still get -- I would still have

19 earned 140.4 percent?

20 A That's correct.

21 Q Okay. If you could flip back to your

22 rebuttal, I just -- I just would like you to

1 reference the section from EIMA that's on Page 5 of
2 your rebuttal.

3 A At Line 99?

4 Q I'm sorry?

5 A At Line 99?

6 Q Yes.

7 A One second. I'm not there yet.

8 Q And this is the section that -- of the
9 Public Utilities Act, Section 16-108.5(c)(4)(A) that
10 discusses incentive comp; correct?

11 A Correct.

12 Q And this section of the law, it refers to
13 incentive compensation expense; correct?

14 A I'm sorry, I don't see that here.

15 Q Well, it's the --

16 A Oh, the first line, yeah, okay. Yes.

17 Q And then in the second sentence it's the
18 third word?

19 A Yes.

20 Q Okay. The statute doesn't use the word
21 "incentive comp" -- it doesn't use the phrase
22 "incentive compensation earned"; does it?

1 MR. RIPPIE: Miss Cardoni, to be clear, you're
2 referring to the section -- the particular section?
3 MS. CARDONI: Yes.
4 MR. RIPPIE: Okay. Thank you.
5 THE WITNESS: No, earned is not included in
6 this section.
7 BY MS. CARDONI:
8 Q And, Miss Brinkman, you're an accountant;
9 correct?
10 A That's correct.
11 Q Okay. As an accountant, what does
12 "expense" mean?
13 A As an accountant, "expense" means what I
14 would record on the financial statements, tax expense
15 as...
16 Q And in other words, is the payout of the
17 award an expense? The amount paid out for AIP, is
18 that an expense?
19 A From an accounting standpoint?
20 Q Yes.
21 A What I will record on the financial
22 statements would be the total payout.

1 Q Because ComEd is only seeking to recover
2 the AIP it paid its employees; correct?

3 A That's correct.

4 Q It's not seeking to recover the amount that
5 ComEd employees earned as you use the phrase;
6 correct?

7 A That's correct.

8 Q Okay. Sorry to do this, but if you could
9 flip back to your surrebuttal, Line 108, I'd like to
10 direct you to the chart that you include.

11 A Okay.

12 Q Okay. The chart that you have provided
13 on -- after Line 108, you show two columns and the
14 first is the earned AIP based on operational metrics;
15 correct?

16 A That's correct.

17 Q And the second is the actual AIP paid out.
18 The actual percentage of AIP that was paid out;
19 correct?

20 A That's correct.

21 Q Okay. So in 2011 -- I just want to make
22 sure I understand these numbers -- in 2011, employees

1 earned -- and, again, I'm using your terminology,
2 133.3 -- 133.2 percent of the AIP award; correct?

3 A That's correct.

4 Q Okay. And it appears that Exelon's earning
5 per share must have been high because the earned AIP
6 was paid out to employees; correct? The exact amount
7 that was earned was paid out?

8 A My understanding of the 2011 plan was that
9 that had a limiter based on ComEd's income --

10 Q Okay.

11 A -- and that limiter did not apply in that
12 year.

13 Q Okay. But my question is just was the
14 amount earned the same as the amount paid out?

15 A Yes.

16 Q In 2012, the employees must have performed
17 very well because the earned AIP based on operational
18 metrics was 148.4 percent; correct?

19 A That's correct.

20 Q But the EPS must have been not as high
21 because that number was limited to 115 percent;
22 correct?

1 A The amount was limited to 115 percent. I
2 don't know what the EPS threshold target and
3 distinguished amounts were set at --

4 Q Okay.

5 A -- to speak to what EPS was.

6 Q And then in 2013 as we know -- and,
7 actually, I'm wondering if that's a typo, it says
8 140.7 percent was earned and maybe the discrepancy is
9 not important, but I thought earlier at Line 140 of
10 your testimony, you had said that the earned AIP was
11 140.4 percent?

12 A So, I'm sorry, when I look at the chart
13 next to 2013?

14 Q I'm looking at the average, I apologize.
15 So as we know 140.4 percent was
16 earned?

17 A That's correct.

18 Q Okay. And -- because of the limiter this
19 year, 124.4 was paid out?

20 A That's correct.

21 MS. CARDONI: Okay. That's all I have.
22 Thanks.

1 MS. SATTER: If we could have just a minute.

2 Mr. Doshi and I have both have

3 questions, but Mr. Doshi is going to ask questions on

4 incentive comp, so we thought to continue on the same

5 topic, he'll go first.

6 JUDGE HAYNES: Okay. And then you won't have

7 questions on incentive comp?

8 MS. SATTER: Correct.

9 JUDGE HAYNES: Okay.

10 CROSS-EXAMINATION

11 BY

12 MR. DOSHI:

13 Q Good afternoon, Miss Brinkman, how are you?

14 A Good. How are you?

15 Q Very good. I'm Sameer Doshi, I'm an

16 attorney in the Attorney General's Office. I believe

17 we've met before.

18 I have some questions for you as you

19 may imagine about your testimony as well as some of

20 your data request responses.

21 A Okay.

22 Q I'd like to start with your surrebuttal,

1 Exhibit 25.0. On Page 2 at Line 34 you have a
2 bold-faced capitalized heading that says, ComEd's
3 compensation programs are proper, no disallowance
4 loans should be made.

5 So is it the Company's position that
6 all recorded AIP expenses for 2013 should be
7 recovered in rates?

8 A That's correct.

9 Q All right. Thank you.

10 At Page 3, Line 45, you state that the
11 alternative of allowing 102.9 percent of the award --
12 and as a parenthetical, I believe that refers to a
13 proposal by Staff Witness Bridal and then you
14 continue -- however, better approximates the actual
15 AIP earned by ComEd employees pursuant to the
16 operational and cost control metrics set forth in
17 EIMA and than Mr. Brosch's proposed disallowance of
18 the entire AIP award.

19 Do you see that?

20 A I do.

21 Q Is the Company willing to accept a partial
22 disallowance of AIP costs so that only 102.9 percent

1 would be recovered as proposed by Staff Witness
2 Bridal?

3 MR. RIPPIE: What do you mean -- I object to
4 the question. What do you mean by "accept?"

5 Do you mean legally waive all rights
6 to ask for something greater or...

7 BY MR. DOSHI:

8 Q Would the Company -- is it the Company's
9 position that it will not contest the proposal
10 offered by Staff Witness Bridal as described?

11 A I believe I state that the Company's
12 position is that everything should be recovered.

13 Q All right. Thank you.

14 A Yeah, I'm sorry. It's Line 114: As
15 discussed throughout my testimony, ComEd believes the
16 full amount of the AIP award that was paid out in
17 2013 is reasonable and recoverable.

18 Q All right. Thank you.

19 On Page 6 at Line 105, you state, If
20 the Commission chooses to impose an alternative
21 limiter in this case, they should consider the facts
22 of this case. And then you show the three-year

1 average of earned AIP based on operational metrics as
2 you define the term "earned" for 2011, 2012 and 2013
3 at Line 108.

4 Do you see that?

5 A I do.

6 Q Is it the Company's position that it would
7 not contest the proposal that you lay out at -- from
8 Lines 105 through 112?

9 A Again, I believe I've stated it's the
10 Company's position that ComEd believes that the full
11 amount of its AIP award that was paid out in 2013 is
12 reasonable and recoverable.

13 Q Okay. Thank you.

14 If the Commission chooses to impose an
15 alternative limiter under the hypothetical that
16 you've introduced at Page 105 -- I'm sorry, Line 105,
17 why would it be appropriate for the Commission to
18 allow recovery of AIP incentive compensation expense
19 based on a historical average of actual payout?

20 A So a couple of things. I wouldn't call
21 this a hypothetical. I called it an alternative and
22 I believe it's up to the Commission what they choose

1 to allow and disallow. I can't form an opinion on
2 what the Commission should do.

3 Q You stated at Line 109, the Commission
4 could consider imposing a limit of 124.2 percent and
5 then you -- you observe that this alternative uses a
6 three-year average.

7 Why did you introduce the concept of a
8 three-year average?

9 A What I was trying to show here is I believe
10 in Mr. Bridal's testimony, he stated -- and I'll
11 paraphrase because I don't have it in front of me --
12 he stated that one limiter could be 102.9 because
13 there is past Commission history with that in common
14 cases or the Commission could choose a limiter of
15 their own. So to allow more information for the
16 Commission to make their decision, I introduced this
17 option showing the AIP performance and payout since
18 the adoption of EIMA in 2011.

19 Q Okay. Thank you.

20 And why did you consider the past
21 three years as opposed to the past five or 10 years
22 to compute the average?

1 A I was just looking at the years that
2 EIMA -- EIMA was adopted in 2011.

3 Q Okay. Are there any other elements of
4 ComEd's asserted revenue requirement that are based
5 on -- sorry, its asserted revenue requirement in this
6 proceeding that are based on a three-year average of
7 expenses over 2011, 2012 and 2013?

8 A I can't say for sure without going through
9 the entire revenue requirement. I mean, we have many
10 schedules and many calculations within that whole
11 revenue requirement, so I can't say for sure whether
12 there is a three-year average in there or not.

13 Q All right. Thank you.

14 And can you confirm in that your table
15 at Line 108 in the actual payout column, the actual
16 payouts for each year were determined after
17 considering the shareholder protection feature?

18 A No.

19 Q Is that not correct?

20 A That's not correct.

21 Q In 2013, was the shareholder protection
22 feature considered in determining actual payout?

1 A Yes.

2 Q In 2012, was the shareholder protection
3 feature considered in determining actual payout?

4 A Yes.

5 Q And in 2011, was the shareholder protection
6 feature considered in determining actual payout?

7 A No.

8 Q Was there no EPS limiter in effect in
9 relation to the AIP for 2011?

10 A There was no EPS limiter in the plan in
11 2011.

12 Q Okay. Thank you.

13 On Page 6 at Line 122 you state,
14 Mr. Bridal's 102.9 percent limiter proposal
15 effectively negates the EPS limiter while recognizing
16 the KPI-based nature of the ComEd AIP award.

17 Do you see that?

18 A I do.

19 Q Can you explain how Mr. Bridal's proposal
20 effectively negates the EPS limiter?

21 A Well, because the EPS limiter, as we see at
22 the Table at 108 for 2013 limited the payout to 124.4

1 percent. The 102.9 is below that and has nothing to
2 do with ComEd's 2013 EPS performance -- I'm sorry,
3 Exelon's 2013 EPS performance.

4 Q If we substituted the word "ignores" for
5 "negates," would you still agree with the statement
6 at -- starting on Line 122 with Mr. Bridal's...

7 A Well, it still puts a limiter on the
8 payout, so I would have to think about whether
9 "ignore" could be used. It ignores the 2013 EPS
10 performance.

11 Q So would it be fair to say that in your
12 view, Mr. Bridal's proposal is substituting a
13 different limiter for the Exelon shareholder
14 protection feature?

15 A For what year?

16 Q For 2013?

17 A What I'm saying -- or what I'm testifying
18 is that Mr. Bridal's 102.9 limiter recognizes the
19 KPI-based nature of the ComEd AIP award and it's a
20 proportionate remedy far more appropriate than a
21 complete disallowance of expenses related to the AIP
22 program.

1 Q Would you agree that Mr. Bridal's proposal
2 reduces recoverable expense below actual payout for
3 2013?

4 A Well, the math would tell you that 102.9 is
5 less than 124.2.

6 Q Okay. Thank you.

7 Right now I'd like to move to your
8 rebuttal testimony, Exhibit 12.0 Revised. Can you
9 turn to Page 3 of your rebuttal testimony, please.

10 A Okay.

11 Q At Line 54 -- starting at Line 54, you
12 quote the applicable part of the Public Utilities Act
13 and you have -- in Footnote 2 at bottom you have the
14 citation for that, Section 16-108.5(c)(4)(A). So the
15 section of the statute that you've quoted there says,
16 Incentive compensation expense that is based on net
17 income or an affiliate's earnings per share shall not
18 be recoverable under the performance based formula
19 rate.

20 Do you see that?

21 A I do.

22 Q Now, in that portion of the statute, is the

1 term "based on" defined?

2 A It is not.

3 Q Does the statute say either in this -- in
4 this quoted portion or in some other part of
5 Section 16-108.5, does the statute say that only
6 positive factors and not negative factors constitute
7 the concept of based on?

8 MR. RIPPIE: I'd have to object. The witness
9 can only talk about the portions of the statute that
10 she references and if you want to try to lay a
11 foundation that she has any familiarity with the
12 entirety of 16-108.5, you are welcome do that, but
13 she's talk being a very specific section.

14 JUDGE HAYNES: Sustained.

15 MR. DOSHI: Let me rephrase the question.

16 BY MR. DOSHI:

17 Q In the portion of the statute quoted on
18 Page 3, does it say -- does it indicate that the term
19 "based on" would relate to only positive factors and
20 not negative factors?

21 A The quote that I have on Page 3 at Line 54
22 says, Incentive compensation expense, as based on net

1 income or an affiliate's earning per share shall not
2 be recoverable under the performance based formula
3 rate.

4 Q So it sounds like you don't see any
5 indication that "based on" refers to only positive
6 factors and not negative factors; is that correct?

7 A I did not read that in the lines I just
8 read, no.

9 Q Okay. Thank you.

10 Is it correct that in 2013, the
11 shareholder protection feature operated to reduce
12 actual AIP payouts by approximately \$8.5 million?

13 A I believe that's correct.

14 Q Was that \$8.5 million reduction based on
15 Exelon's earnings per share?

16 A It was based on the shareholder protection
17 feature.

18 Q Okay. Thank you.

19 I'd like to turn to Page 6 of your
20 rebuttal testimony. At Line 128 you state, ComEd AIP
21 is not funded based on an Exelon earning level no
22 matter what that level is.

1 Do you see that?

2 A I do.

3 Q Now, I notice that you've used that term
4 "funded," several times throughout your testimony.

5 Could you explain your understanding
6 of the term "funded" as you've used it?

7 A Yeah. When I think of "funded," I think
8 earned, so similar to earned. ComEd employees have
9 earned AIP at 140.4 percent, so that is the funded
10 amount.

11 In the 2013 plan, that funded amount
12 can be limited by the shareholder protection feature,
13 that funded or earned amount could be limited by the
14 shareholder protection feature.

15 Q Thank you.

16 I have a similar question to that
17 asked by Miss Cardoni earlier. As an accountant,
18 when you record payroll expense, would you record
19 actual payout under the AIP or the amount that was
20 funded under the -- I should clarify, I mean under
21 the ComEd AIP?

22 A If the question is similar to

1 Miss Cardoni's I would record on the books the amount
2 that was paid out, that is the actual expense.

3 Q Okay. Thank you.

4 Can you confirm that the shareholder
5 protection feature in 2013 defined the threshold
6 level of Exelon EPS as \$2.22 per share?

7 A I'd have to look at the plan. I don't
8 recall. That may be right. Yes. On Page 3 of the
9 Exelon brochure it states the threshold EPS is \$2.22.

10 Q And, hypothetically, if Exelon EPS for 2013
11 had been determined to be \$2.22 per share or below,
12 can you confirm that ComEd AIP payouts would be
13 reduced to zero in that case?

14 A No.

15 Q Can you explain the significance of the
16 \$2.22 threshold level?

17 A The \$2.22 is the threshold. So if Exelon
18 EPS is \$2.22, then the ComEd -- then the shareholder
19 protection feature -- if the Exelon EPS is \$2.22 the
20 threshold has been met.

21 Q And if the threshold were not met, what
22 would be the implication for the shareholder

1 protection feature?

2 A In the hypothetical example or in 2013?

3 Q In the hypothetical example.

4 A Well, in the hypothetical, it would depend
5 on the amount that was earned under the ComEd
6 operational and cost control metrics.

7 Q Hypothetically, if the Company performance
8 multiplier determined pursuant to KPIs for a given
9 year were a positive number and, further
10 hypothetically, if Exelon EPS were below threshold,
11 what would happen to Exelon AIP payouts?

12 MR. RIPPIE: Mr. Doshi, to be clear, you're
13 operating in a hypothetical given year but with the
14 2013 plan; right?

15 MR. DOSHI: Yes.

16 THE WITNESS: So just so I'm clear what you're
17 saying is the ComEd operational and cost control
18 metrics have been met and there is a positive payout
19 there?

20 BY MR. DOSHI:

21 Q Yes.

22 A But the EPS threshold has not been met --

1 Q Yes.

2 A -- in this hypothetical?

3 Then I would say the amounts earned

4 under the ComEd cost control and operational metrics

5 would then be limited to zero.

6 Q Okay. Thank you.

7 And thus the amount paid out would be

8 zero in that hypothetical; is that correct?

9 A That's correct.

10 Q Okay. Thank you.

11 Can you tell me, for any given year on

12 what date in that year or maybe the following year,

13 is Exelon EPS calculated and determined for purposes

14 of the shareholder protection feature?

15 A I don't know the answer to that question.

16 Q Okay. Do you have an estimate or a best

17 guess?

18 A Of the date?

19 Q Yes.

20 A I don't know.

21 Q Okay. I'd like to present a hypothetical.

22 Mr. Rippie may suggest it's too complicated, but I'll

1 try.

2 Let's assume the date when the Exelon
3 EPS, for purposes of the shareholder protection
4 feature, is determined is December 31st for a given
5 year. So -- just for example under my hypothetical,
6 on December 31st 2013 Exelon EPS would be calculated
7 for purposes of determining how the shareholder
8 feature might or might not apply to the ComEd AIP for
9 2013.

10 Further in my hypothetical, let's say
11 on December 31st it were calculated that Exelon EPS
12 were \$2.21 for 2013, what would thus be the resulting
13 ComEd AIP payout for 2013 under that hypothetical?

14 A Again, you are also assuming in your
15 hypothetical that the cost control and operational
16 metrics have shown an earned positive amount?

17 Q Yes.

18 A Then based on this -- applying this plan to
19 your hypothetical and as an accountant, assuming the
20 year-end close happened really fast if you notice on
21 December 31st of 2013, I would say that the payout is
22 reduced to zero.

1 Q Okay. Thank you.

2 Now, further in my hypothetical world,
3 on January 1st somebody comes into the office after a
4 rocky New Year's Eve and realizes that they didn't
5 add the numbers properly yesterday -- and by
6 "somebody," I mean somebody in Exelon's Finance
7 Department and this person's in Exelon Finance
8 Department recalculates Exelon EPS and realizes, Oh,
9 whoops, actually, it's \$2.22, what effect would that
10 recalculation have upon ComEd's actual AIP payout for
11 2013 in that hypothetical world?

12 A Well --

13 Q Would that increase the ComEd AIP payout
14 for what was previously thought on December 31st?

15 A Well, I'm unclear in your hypothetical. I
16 mean, when we're calculating this EPS, are you
17 assuming that we are looking -- every time we
18 recal- -- calculate or recalculate we are looking at
19 the AIP plan with every single calculation of EPS?

20 Q In my hypothetical nothing changed with
21 respect to achievement of KPI targets on January 1st
22 versus December 31st.

1 A Okay.

2 Q Yes. On both days Exelon non-gap EPS was
3 calculated for purposes of determining whether the
4 shareholder protection feature should apply?

5 A So if -- in your hypothetical, again, using
6 the 2013 plan, the EPS on that date is now \$2.22,
7 then depending on where those costs and operational
8 performance metrics landed, the payout would still
9 be -- potentially be limited, again, depending on
10 where those operational metrics came out. If the
11 operational and cost control metrics only came to 40
12 percent and by meeting threshold, the limiter got to
13 60, then the limiter doesn't apply.

14 Q So under my hypothetical, the calculated
15 actual AIP payout due, when it was calculated on
16 December 31st was zero; but then on January 31st when
17 Exelon EPS is recalculated, the actual AIP payout due
18 would increase to a positive number?

19 MR. RIPPIE: If this weren't so potentially
20 important, I wouldn't object, but you now said
21 January 31st --

22 MR. DOSHI: Oh, I did?

1 MR. RIPPIE: -- and you were saying
2 January 1st.

3 MR. DOSHI: I'm sorry.

4 MR. RIPPIE: And also, to be clear, is the
5 January 1st calculation a recalculation as of
6 December 31st?

7 MR. DOSHI: Yes.

8 MR. RIPPIE: So it's just somebody made a
9 mistake?

10 MR. DOSHI: Yes.

11 THE WITNESS: So, again, my answer doesn't
12 change. If you've now met the threshold, depending
13 on where those cost control and operational metrics
14 came --

15 BY MR. DOSHI:

16 Q If I can interrupt you, the assumption I
17 posited was that KPI targets were met for 2013.

18 A So then, yes, you would not be limited to
19 zero.

20 Q So then actual AIP payouts do increase to
21 some positive number from zero?

22 A Well --

1 MR. RIPPIE: Hold on. I object. Increase from
2 what? You just told me it was a mistake.

3 MR. DOSHI: Increase from what was previously
4 wrongfully calculated.

5 MR. RIPPIE: Oh, if -- increase as compared to
6 the mistake?

7 MR. DOSHI: Sure.

8 MR. RIPPIE: Okay. Got it. Sorry.

9 THE WITNESS: Yes. So any number above zero is
10 a positive adjustment.

11 BY MR. DOSHI:

12 Q Okay. Thank you.

13 I'd like to refer to your direct
14 testimony, Exhibit 2.0. At Page 7, Line 133 you
15 begin a discussion of performance metrics that ComEd
16 is required to meet under the EIMA.

17 Do you see that?

18 A I do.

19 Q And then you refer to -- towards the end of
20 that passage, towards -- towards the end of the
21 passage that ends at Line 156 on Page 8, you refer to
22 the calculation of ComEd's performance metrics

1 penalty for 2013.

2 Do you see that?

3 A Can I just read this real quick? Okay.

4 I'm sorry, can you please repeat the question?

5 Q Me question was just do you see your
6 discussion of ComEd's -- sorry, I'm reading your
7 testimony from my ComEd -- what you call ROE penalty
8 calculation pursuant to ComEd's multi-year
9 performance metrics plan that you discuss from --
10 Page 7, Line 133 to Page 8 Line 156?

11 A I do.

12 Q Okay. And at Line 153, you state that the
13 calculation of the penalty was reflected on work
14 paper 23.

15 Do you see that?

16 A I say, The calculation is set forth on work
17 paper 23.

18 Q Okay. Fair enough. Thank you.

19 I'd like now to distribute what we
20 will call AG Cross Exhibit 12, I believe, which is a
21 copy of of ComEd's work paper 23 that you alluded to
22 in your testimony. I'm wait until my colleague

1 distributes it.

2 (Whereupon, AG Cross
3 Exhibit No. 12 was
4 marked for identification.)

5 BY MR. DOSHI:

6 Q Do you now have that work paper in front of
7 you.

8 A I do.

9 Q Thank you.

10 So do you see at Line 4 where it
11 indicates that there was a service reliability target
12 penalty of negative point 05 percent?

13 A I do.

14 Q Okay. Thank you.

15 Now, I'd like you to refer back to
16 your direct testimony, Exhibit 2.0. At Page 20
17 staring at Line 425 and continuing to Line 442 you
18 state, that -- and you state specifically at
19 Line 440, That ComEd employees exceeded target
20 performance on all but one KPI in 2013 resulting in a
21 calculated AIP payout of 140.4 percent.

22 Do you see that?

1 A I do.

2 Q And at Line 435, it looks like the one KPI
3 that was not met was capital expenditures.

4 Do you see that?

5 A I do.

6 Q So my question is: If ComEd met all of its
7 KPIs with respect to operational goals in 2013, then
8 why is it paying a service reliability target penalty
9 under EIMA?

10 A Well, you're comparing two different
11 metrics. These are AIP metrics. These metrics
12 relate to the ROE penalty under EIMA.

13 Q Thank you.

14 I guessed as much, in fact. Can you
15 explain how the metrics differ and if so, why they
16 are not aligned?

17 MR. RIPPIE: Can we take them one at a time?

18 MR. DOSHI: Sure.

19 MR. RIPPIE: Thanks.

20 BY MR. DOSHI:

21 Q Can you explain how the metrics differ?

22 A Each individual metric? No. I'm not --

1 all I state on the performance metrics penalty is
2 that we had one and it impacts ROE. I state nothing
3 about these performance metrics as it relates to the
4 AIP plan.

5 Q Thank you. I understand.

6 But if ComEd met or exceeded all of
7 its operational metrics under the AIP plan but failed
8 to meet a target -- a service reliability target
9 under EIMA, it sounds like the operational goals
10 under AIP are not aligned -- at least some of the
11 operational goals under the AIP are not aligned to
12 operational goals under EIMA.

13 Would you agree with that?

14 A No.

15 Q Can you explain how ComEd could have met or
16 exceeded all of its operational KPIs under AIP but
17 failed to meet a service reliability target under
18 EIMA?

19 A I can't. I don't have all of the
20 definition of these performance metrics in front of
21 of me to compare the two.

22 Q Okay. That's fine. Thank you.

1 I'd like now to discuss the data
2 request responses that you submitted on Monday night,
3 I believe and we're going to mark that as AG Cross
4 Exhibit 13 and my colleague will distribute those.

5 (Whereupon, AG Cross
6 Exhibit No. 13 was
7 marked for identification.)

8 BY MR. DOSHI:

9 Q So I'd like to begin with data request
10 17.01.

11 Do you have that in front of you?

12 MR. DOSHI: I'm sorry, Mr. Rippie?

13 MR. RIPPIE: Can we wait?

14 MR. DOSHI: Oh, sure.

15 BY MR. DOSHI:

16 Q Now, I'd like to begin by setting some
17 context. In your surrebuttal testimony, Exhibit 25.0
18 at Page 4, Line 65, you stated -- the question was,
19 Does applying the logic behind the Commission's
20 decision in Docket No. 11-0721 i.e., applying the
21 plans own limiter make sense here?

22 Your answer is, Yes. Applying the

1 logic behind the Commission's decision in Docket
2 11-0721 to this case would result in allowing
3 recovery of exactly what ComEd has requested -- 124.4
4 percent -- the amount of AIP paid out after applying
5 the limiter.

6 Do you see that?

7 A I do.

8 Q And then back to data request AG 17.01, we
9 asked you to review the order in Docket No. 11-0721
10 and explain how the Commission's logic on the
11 incentive compensation issue would authorize recovery
12 of all of ComEd's 2013 AIP incentive compensation
13 plan and in your response, you -- you referred to
14 Pages 88 through 90 of the order and Page 89
15 specifically where the order states: ComEd's actual
16 AIP performance resulted in a calculated payout of
17 110.3 percent and then you quote where the order
18 says, The initial net income limiter -- I'm not sure
19 if this is a direct quote -- resulted in a payout of
20 102.9 percent and then you note that at Page 90 of
21 the order, the Commission approved ComEd's inclusion
22 of its 2010 AIP expense at 102.9 percent.

1 Does that all accurately describe your
2 response?

3 A Yeah, I think you read it verbatim.

4 Q Okay. Thank you.

5 So is it your contention that in the
6 11-0721 case, the Commission approved an EPS limiter
7 based on Exelon Corporation's EPS that applied to the
8 ComEd's AIP?

9 A I don't think I state that here. What the
10 Commission did in that order was approved a payout
11 that was limited by net income AIP.

12 Q Net income of which entity?

13 A Of ComEd.

14 Q Of ComEd?

15 So the net income limiter that was at
16 issue in Docket 11-0721 that related to the ComEd AIP
17 was based on ComEd net income; correct?

18 A Correct.

19 Q And it was not based on Exelon
20 Corporation's net income; is that correct?

21 A That's correct.

22 Q Okay. Thank you.

1 And under your understanding of that
2 statutory language that we discussed earlier, is
3 ComEd an affiliate of ComEd?

4 MR. RIPPPIE: If we're going to talk about some
5 statutory language that's now 20 minutes old, I think
6 it's fair for the witness to be directed back to it
7 so she can look at it.

8 MR. DOSHI: Sure.

9 THE WITNESS: 12.0 Rev, Line 54.

10 BY MR. DOSHI:

11 Q Okay. Thank you for directing me.

12 Yes, at Line 54 and 55, the statute
13 refers to incentive compensation expense that is
14 based on net income or affiliates earnings per share.

15 A That's correct.

16 Q I'll withdraw the question.

17 I'd like to refer to your response to
18 data request 17.03 C.

19 A Okay.

20 Q We asked that -- we asked you to confirm
21 that no party brought the shareholder protection
22 feature or any similar Exelon Corporation EPS-based

1 limiter than applicable to the ComEd AIP to the
2 Commission's attention in that docket.

3 And in response, you stated that
4 ComEd's 2011 AIP plan at issue in ICC Docket No.
5 12-0321 was subject to a ComEd net income limiter.
6 ComEd provided the plan documents to the parties as
7 part of party testimony exhibits as part of that
8 case.

9 Do you see that?

10 A I do.

11 Q Do you know what piece of testimony in that
12 case mentioned or describes the net income limiter?

13 A I did not go back and read all the
14 testimony in that case.

15 Q So what is the basis for your belief that
16 the plan documents were part of testimony exhibits in
17 that case?

18 A Well, typically, the revenue requirement
19 witness has put those plans in as an exhibit to their
20 testimony.

21 Q Okay. So you think typically that would
22 happen, but you're not aware of the specific exhibit?

1 A I can't tell you the exhibit number.

2 Q Okay. Thank you.

3 In data request 17.03 D, we asked
4 please confirm that in Docket 13-0318 -- I'm looking
5 at Roman numeral II, by the way, D II.

6 A Thank you.

7 Q We asked, Please also confirm that no party
8 brought the shareholder protection feature to the
9 Commission's attention in that docket.

10 In your response, you referred us to
11 look at your response to Subpart A2 and then if we
12 turn to your response to Subpart A2, which was a
13 question relating to Docket No. 07-0566, you state
14 that ComEd provided the planned documents to the
15 parties in the course of discovery.

16 Now, in relation to Docket
17 No. 07-0566, do you know if the planned documents
18 were entered into the record as testimony or
19 exhibits?

20 A I can't be for sure. I mean, I said that
21 they were provided in the course of discovery, but
22 again, I didn't go back and read through every piece

1 of testimony in that case.

2 Q Okay. I had the same question for Docket
3 No. 13-0318.

4 Are you aware whether the AIP plan
5 documents or anything else mentioning the shareholder
6 protection feature was entered into the record as
7 testimony or exhibits?

8 A I do believe in the 13-0318 case, it was in
9 with the direct testimony of Martin Fruehe.

10 Q Okay. Next, I'd like to refer to your
11 response to data request 17.04. In the question, we
12 refer to Lines 99 to 100 in your surrebuttal
13 testimony, Exhibit 25.0 which is on Page 5 --
14 actually, to set the context better, I should back up
15 all the way to Line 92. I think that would be
16 better.

17 The question in your testimony, Is why
18 should the Commission focus on the ComEd cases -- I
19 think there you are referring to recent ComEd rate
20 cases -- as opposed to the other cases discussed by
21 Mr. Bridal -- I think you're referring to
22 Mr. Bridal's rebuttal testimony -- and your answer

1 is: The facts and circumstances of each case are
2 unique as are the incentive compensation plans of
3 each utility. It is, therefore, difficult to tell if
4 and to what extent the Commission reached a different
5 result in those other cases. Moreover, to the extent
6 the Commission did reach a different result, there
7 are two reasons why the Commission could have done
8 that.

9 One, either the Commission was being
10 arbitrarily inconsistent, which I doubt would be the
11 case. Or, two, there are significant differences
12 between the facts in those cases and the facts in the
13 ComEd cases.

14 Now, in your point one there, it
15 sounds like you're suggesting -- you believe it's
16 unlikely that the Commission was arbitrarily
17 inconsistent.

18 Is that an accurate description of
19 your testimony?

20 A Yes.

21 Q Would it be fair to say that you are thus
22 implying that it's much more likely that there are

1 significant differences between the facts in those
2 cases and the facts in the ComEd cases?

3 A That's correct.

4 Q Okay. Thank you.

5 So in your response to data request
6 17.04, you cited the part of your testimony on Line
7 98 where you suggested one possible reason could be
8 that the Commission was arbitrarily -- was being
9 arbitrarily inconsistent; but I guess now you're
10 saying that was an unlikely outcome; is that
11 correct -- or an unlikely interpretation?

12 MR. RIPPPIE: I guess I object to the
13 mischaracterization of the data request response
14 which rather clearly contains her quotation that
15 there are two reasons why it could have been the
16 case.

17 MR. DOSHI: I understand. But because
18 Miss Brinkman just a couple minutes ago admitted that
19 the first reason in her testimony is unlikely, I
20 would like to further explore her understanding of
21 the second reason she gave in her testimony.

22 MR. RIPPPIE: Well, I'm not objecting to that.

1 I'm simply objecting to you characterizing the data
2 request response as saying there is only one reason
3 when it says there's two. She explained to you in
4 her testimony why she didn't believe the first one to
5 be as likely as the second; but she in no sense in
6 this document says that there's only one reason. I'm
7 not objecting to your inquiring about it, only to the
8 mischaracterization.

9 JUDGE HAYNES: Can you rephrase the question?

10 MR. DOSHI: Yes, your Honor.

11 BY MR. DOSHI:

12 Q In your data request response to AG 17.04,
13 you declined to explain the significant differences
14 between the facts in Mr. Bridal's cited cases and the
15 facts in the ComEd cases based, in part, on the
16 statement in your testimony that there are two
17 reasons why the Commission could have reached
18 different results; is that correct?

19 A That's what I state here.

20 Q So in light of your statement a couple
21 minutes ago that reason number one on Line 98 of your
22 surrebuttal testimony is unlikely, I would like to

1 explore with you a little bit what you believe to be
2 significant differences between the facts in
3 Mr. Bridal's cited cases and the facts in ComEd's
4 cases.

5 Would that be okay?

6 A Sure.

7 Q Okay. Thank you.

8 I'll start with -- there are two cases
9 mentioned in data request 17.04. I'll start with
10 Docket No. 07-0507 from 2008.

11 Do you believe there are significant
12 factual differences between that case and the recent
13 ComEd rate cases as it relates to incentive
14 compensation?

15 A I can't be for sure in either of these
16 cases. I don't have access to all the testimony, the
17 discovery or these companies compensation plans, so I
18 don't know what they look like in comparison to
19 ComEd.

20 The point that I am making is looking
21 at all of these different Commission cases, it's hard
22 to tell what was approved and what wasn't approved in

1 all of the different dockets cetera because Company's
2 plans are different and because the facts and
3 circumstances are different in each one.

4 So just picking these two orders that
5 you did, I can't tell what all the evidence in those
6 cases to know what is different and what isn't and I
7 can't tell from the orders that these cases were a
8 similar situation as what we have here, which is why
9 I say in my testimony, it makes more sense to look at
10 the ComEd cases because you see the history of
11 ComEd's incentive plans over time.

12 MR. DOSHI: Okay. Thank you.

13 That's all the questions I have for
14 Miss Brinkman. My colleague, Miss Satter will ask
15 additional questions on other topics.

16 THE WITNESS: Okay. Thank you.

17 CROSS-EXAMINATION

18 BY

19 MS. SATTER:

20 Q Good afternoon, Miss Brinkman.

21 A Hello.

22 Q Are you ready?

1 A I'm ready.

2 Q Okay. I have a few questions for you not
3 related to incentive compensation. First, for
4 clarification, in your direct testimony, you include
5 Exhibit -- ComEd Exhibits 2.05 and 2.06 and if I
6 understand that, these exhibits show how ComEd's
7 revenue requirement would change if the Appellate
8 Court resolves all issues on appeal in your favor; is
9 that a fair characterization of those exhibits?

10 A That's correct.

11 Q So looking at ComEd Exhibit 2.05, it shows
12 that the top line, Line No. 1 is what's -- what was
13 being requested in your direct case; right?

14 A That's correct.

15 Q And then Line 19 shows what would have been
16 requested if everything on appeal had been resolved
17 in your favor; right?

18 A That's correct.

19 Q Okay. So being a lawyer and needing to
20 walk through the arithmetic step by step, you would
21 subtract Line 1 from Line 19 to determine the total
22 impact of the issues on appeal?

1 A To this case's --

2 Q Yes.

3 A -- revenue requirement?

4 Q In this case?

5 A Yes.

6 Q And do you agree with me it's about

7 \$60 million total that would be shown I believe in

8 Line -- Column E?

9 A Yeah, that looks about right.

10 Q And Exhibit 2.06 runs these changes through

11 the formula?

12 A That's correct.

13 Q Now, the Commission's decision to adjust

14 billing determinants is one of the issues listed on

15 2.05; correct?

16 A That's correct.

17 Q And that's Lines 17 and 18?

18 A That's correct.

19 Q Now, no dollars are associated with that;

20 right?

21 A That's correct.

22 Q Okay. Now, are you aware that the

1 Appellate Court has affirmed the Commission on this
2 issue for the second time in a decision dated
3 June 30th, 2014?

4 MS. SATTER: I mean, I'm asking the witness if
5 she's aware of it.

6 MR. RIPPIE: I didn't say anything.

7 THE WITNESS: I am aware that in two Appellate
8 Court decisions related to two specific cases that
9 the Appellate Court did not rule in favor of ComEd.

10 BY MS. SATTER:

11 Q Okay. And those two specific cases were
12 11-0721 and 12-0321?

13 A That's correct.

14 Q Do you consider the billing determinants
15 issue -- well, let me rest- -- let me rephrase this.

16 Is ComEd continuing to contest the
17 Commission's authority to adopt a billing determinant
18 adjustment in this docket?

19 A Can you point to where I say that in my
20 testimony?

21 Q I'm asking because your testimony was filed
22 before June 30th --

1 MR. RIPPIE: Well, you -- unless there is a
2 reference in this witness's testimony or a data
3 request to that subject, I will object on scope.

4 MS. SATTER: On billing determinants?

5 MR. RIPPIE: No, on scope. To ask whether this
6 witness can testify as to the Company's continued
7 pursuit or non-pursuit of issues on appeal in another
8 case.

9 MS. SATTER: I'm not asking about the appeal on
10 another case. I'm asking about in this case.

11 MR. RIPPIE: Well, then I'm sorry. I'm
12 confused. Since the impact on this case that you
13 just asked her about relates to appeals from other
14 cases, including appeals that -- where there are PLAs
15 pending and petitions for rehearing pending. So I
16 renew my objection on scope. If this witness did not
17 talk about the current legal status of those cases,
18 your question is improper.

19 JUDGE HAYNES: I think that I'm not clear what
20 your question was. If your question was what the --
21 maybe you can restate your question or if --

22 MS. SATTER: Let me --

1 JUDGE HAYNES: Go ahead.

2 MS. SATTER: Let me move on because it will
3 kind of come back to it. I think that might set more
4 of a foundation.

5 JUDGE HAYNES: Okay.

6 BY MS. SATTER:

7 Q So in your direct testimony at Page 15 --
8 actually, starting at the bottom of Page 14, Line 292
9 there is a caption that says, Resolution of issues on
10 appeal and then that goes through Page 15, Line 306.
11 And you say at Line 301, because the Court's make act
12 during this preceding, ComEd has prepared a schedule
13 showing how a resolution of those issues, in
14 accordance with ComEd's views, would affect actual --
15 would affect relevant revenue requirements.

16 And then you continue, ComEd requests
17 that if its views prevail, these changes are
18 incorporated.

19 Is that a fair summary?

20 A Can I just read the section real quick?

21 That's correct.

22 Q And -- so my question was whether -- in

1 this situation -- in the situation involving billing
2 determinants, ComEd's views did not prevail, is ComEd
3 asking the Commission to reflect what the Court did
4 in this case and no longer contests the billing
5 determinant issue?

6 MR. RIPPIE: First of all, those are two
7 different questions. And second of all, I renew my
8 objection. This witness calculated the numerical
9 impact of prevailing in the reference testimony on
10 those issues. There is other testimony where she
11 spells out, clearly, what the Company's position is
12 on billing determinants without respect to
13 anticipating future resolutions or continued
14 resolutions of those cases. This witness does not
15 talk about the legal opinion with respect to what the
16 effect of those decisions are or how they affect the
17 Commission's authority.

18 There is a place for that but it isn't
19 questioning this witness.

20 MS. SATTER: I'll withdraw the question.

21 JUDGE HAYNES: Okay.

22

1 BY MS. SATTER:

2 Q Let's just talk billing determinants then.

3 You do talk about billing determinants in your direct

4 rebuttal and surrebuttal testimony; right?

5 A I do.

6 Q Now, in your direct testimony at Page 46,

7 Lines 975 to 978, you define billing determinants --

8 A I'm sorry --

9 Q Did you get there?

10 A -- can I get there real quick?

11 MR. RIPPIE: I didn't...

12 THE WITNESS: 975 to 978.

13 MR. RIPPIE: Of direct?

14 THE WITNESS: Of direct. Page 46.

15 MR. RIPPIE: There.

16 THE WITNESS: Okay. I'm sorry.

17 BY MS. SATTER:

18 Q Are you with me?

19 A Yes.

20 Q So you define billing determinants as the

21 number of units of the service that the utility can

22 be expected to sell. And then you continue, They do

1 not change the revenue requirement but change the
2 charges that are applied to recover that revenue
3 requirement; right?

4 A That's correct.

5 Q Now, in your rebuttal at Page 22 -- I'm
6 sorry to jump around like this -- Line 45- --
7 starting at 451, you say, That the rates recovering
8 2013 costs should use 2013 billing determinants.

9 Is that -- is that right?

10 A I'm sorry, can you repeat the question,
11 please.

12 Q Do you believe that the rates recovering
13 2013 costs should use 2013 billing determinants?

14 A Well, I state here, the fact that the rates
15 being set in this case are the means by which ComEd
16 should ultimately recover its actual 2013 costs is
17 another reason why it is not only reasonable but
18 essential to use the 2013 actual billing
19 determinants.

20 Q So then could you paraphrase that to mean
21 that because you're recovering 2013 costs, you want
22 to use 2013 billing determinants?

1 A That's correct.

2 Q Is that a simple way?

3 A That's correct.

4 Q Now, are the 2013 costs that you refer to

5 at this portion of your testimony, are these the

6 costs used to determine the 2015 rate year revenue

7 requirement inclusive of the 2013 reconciliation?

8 A I'm sorry, can you repeat that one more

9 time?

10 Q Okay. So the 2013 costs that you refer

11 to --

12 A Mm-hmm.

13 Q -- do they refer to the costs that form the

14 revenue requirement that will be collected in 2015?

15 A That's correct.

16 Q Okay. And they only form a part of it;

17 right? They only form apart of the 2015 total

18 revenue requirement? Because of the 2014 projected

19 plant addition expense; correct?

20 A Well, the 2013 actual costs -- I mean, in

21 this case, we are calculating what the 2013 actual

22 revenue requirement should be based on the 2013 FERC

1 formula.

2 Q And is that reflected in the reconciliation
3 adjustment or would you say that that's part -- let's
4 just leave it at, that that is reflected in the
5 reconciliation adjustment?

6 A Well, 2013 costs are reflected not only in
7 the reconciliation adjustment, but also they're a
8 basis for the initial year revenue requirement.

9 Q And in addition to the 2013 actual costs
10 that are used as a basis for the 2015 revenue
11 requirement, you add the 2014 projected plant
12 additions; correct?

13 A That's correct.

14 Q And that's how the formula works?

15 A That's correct.

16 Q So in 2015, consumers will be paying rates
17 that include three elements, I'll specify them: The
18 2015 actual costs, the 2014 plant additions and the
19 2013 reconciliation adjustment?

20 A No.

21 Q Okay. So tell me where I'm wrong.

22 A So I believe what you said was 2015 actual

1 costs, 2014 plant additions and 2013 reconciliation.
2 There are no 2015 actual costs.

3 Q If I said that, I misspoke. I spent 2013
4 actual costs, plus 2014 projected plant additions,
5 plus the 2013 reconciliation adjustment.

6 A That's correct.

7 Q So would you agree with me that the 2013
8 actual costs are not recovered in isolation from
9 other costs under the formula rates?

10 MR. RIPPIE: I object to the question as vague.
11 I don't know what "in isolation from" means. And the
12 record doesn't --

13 MS. SATTER: Form the total --

14 MR. RIPPIE: I'm sorry. You started answering
15 and I think you were trying to answer what I said, so
16 go ahead. It's an ambiguous term. I don't know what
17 it means and it's not clear. There is a single
18 charge, so I'm not sure what "in isolation" means.

19 MS. SATTER: Are you finished with your
20 objection?

21 MR. RIPPIE: Yes.

22

1 BY MS. SATTER:

2 Q Do you agree --

3 MS. SATTER: I'm withdrawing the question.

4 BY MS. SATTER:

5 Q -- do you agree that the 2013

6 reconciliation adjustment is collected from consumers

7 in 2015?

8 A The 2013 reconciliation adjustment is

9 included in the revenue requirement in this

10 proceeding, which is used in 2015.

11 Q So even though these are 2013 costs,

12 they're being charged to consumers in 2015?

13 A That's correct.

14 Q Okay. Is it possible for ComEd to only

15 charge 2013 costs to consumers who were customers in

16 2013 --

17 A I'm sorry?

18 Q -- under the formula rate?

19 A I'm sorry, could you say it again? Only

20 charge 2013 costs?

21 Q To customers who were of record in 2013

22 under the formula rate mechanism.

1 A No.

2 Q Now, in both your direct and rebuttal
3 testimony, you talk about the effect of billing
4 determinants on the Company's ability to recover its
5 revenue requirements.

6 So specifically on Page 27 of your
7 direct, Lines 996 to 998 -- I'm sorry.

8 A You mean rebuttal?

9 Q Wait. Wait. Wait. Hold on. Page 47.

10 A 47 of direct?

11 Q Yeah. At Line 996 you say, increasing the
12 billing determinants for projected customer growth
13 creates a permanent and unrecoverable gap in ComEd's
14 ability to recovery the Commission approved revenue
15 requirement; right?

16 A That's correct.

17 Q And similarly, in your rebuttal -- revised
18 rebuttal at Page 21, Line 43 -- 431 to 432 you say,
19 Adjusting the billing determinants for customer
20 growth is a permanent reduction in ComEd's revenues?

21 A I'm sorry, I'm not as quick as you getting
22 there. Can you point me to that again?

1 Q Sure. Page 21 in your rebuttal, Line 431
2 and 432.

3 A That's correct.

4 Q So is it your position that the Commission
5 should use the 2013 billing determinants to collect
6 rates in 2015?

7 A Can you point me to where I say that?

8 Q I'm asking you that question. If that's
9 your position.

10 A My interpretation of the statute -- and I
11 believe it's a plain reading of the statute -- says
12 to use historical weather normalized billing
13 determinants.

14 Q Okay. So translating that into common
15 language, do you -- is it your position that 20- --
16 that the number of customers and the weather
17 normalized usage for 2013 should be used to collect
18 rates in 2015?

19 A It's my position that the 2013 historical
20 weather normalized billing determinants should be
21 used.

22 Q Okay. So let's talk about the effect if

1 ComEd has more customers in 2015 than it had in 2013
2 all else equal; okay?

3 A Okay.

4 Q So let's say -- I'm going to provide you a
5 hypothetical. We've got a \$100,000 revenue
6 requirement.

7 A Okay.

8 Q We have 1,000 customers in 2013. Okay. We
9 have 1,100 customers in 2015. So if we simplify
10 everything and we take the total revenue requirement
11 and divide it by the total inform customers using
12 2013 number of customers, the charge will be \$100,000
13 per customer; is that right? No usage charge, just
14 assuming straight per customer charge.

15 A What would -- this hypothetical would never
16 happen; right?

17 Q No, no, it wouldn't happen. Don't worry,
18 it would not happen.

19 A Okay.

20 Q Agree, I would agree with that.

21 A So do you think your math, yes.

22 Q Okay. So then the next -- in 2015, two

1 years later, the economy is going great, you have a
2 10 percent increase in customers, so now we have 110
3 customers but the same revenue requirement because
4 you're so efficient. If we used the same billing
5 determinants from 2013 instead of recognizing
6 customer growth in 2015, do you agree that instead of
7 collecting \$100,000, the Company would collect
8 \$110,000?

9 A I'm sorry, can you say that last part one
10 more time?

11 Q Okay. If you had -- if you had 1,100
12 customers in 2015, but you based rates on your 1,000
13 customers from 2013, isn't it true that you would
14 collect \$110,000 rather than \$100,000 spread over
15 those customers?

16 A Based on your very simple example, I think
17 that's fair to say; but again, in reality, you've got
18 kilowatt hours that need to be considered, you've got
19 demand charges that need to be considered. All of
20 that weighs into the billing determinants.

21 Q But the principle is, if you have more
22 units and you don't change the division really --

1 because it's kind of simple division, right, you have
2 your revenue requirement by divided by the number of
3 demand units, right, billing determinants --

4 A Mm-hmm.

5 Q -- if you have fewer demand units than you
6 have customers, you will collect more?

7 A That very basic assumption, yes; but if
8 you're collecting a 2013 revenue requirement and the
9 number of customers you had was 1,000, that is what
10 you should use to try to get to that revenue
11 requirement, those costs were based on that year and
12 based on the read of the statute and using weather
13 normalized billing determinants for that year, you
14 would want to base collecting that revenue
15 requirement on the number of customers for that year.

16 Q So then the new customers just won't be
17 billed; is that right? So that way you'll be sure to
18 match...

19 MR. RIPPIE: I'm sorry, I hate doing this, but
20 you're asking -- when you say "the new customers,"
21 you're pulling her back into your hypothetical?

22 MS. SATTER: Right. The customers --

1 MR. RIPPIE: I understand.

2 MS. SATTER: The new customers that came
3 on-line in 2014 and 2015 --

4 MR. RIPPIE: In the hypothetical.

5 THE WITNESS: I don't -- I can't say that they
6 wouldn't be billed. I mean, if you're in '15 and
7 you're trying to collect '15 costs, that's a
8 different example. If you were trying to collect '13
9 costs in another year, the way to collect '13 costs
10 is to use the '13 billing determinants whenever you
11 do it.

12 BY MS. SATTER:

13 Q So do you think there should be two sets of
14 billing determinants, one set for the reconciliation
15 balance and one set for the rate year collection?

16 A No. I think there should be one related to
17 the year that you are reconciling. That is your last
18 chance to get the actual costs for that year.

19 Q Okay. So from your point -- from your
20 point of view, you would just bill all the customers
21 that you have in the billing year 2015; right?
22 Because ComEd can't discriminate among who its

1 billing; correct?

2 A Well, again, in your hypothetical, which we
3 agreed would never happen, I guess I'm saying yes.

4 Q So you do you think that there would never
5 be customer growth over a two-year period?

6 A I don't know what customer growth would be.

7 Q Okay. Do you think it's -- do you think
8 it's reasonable to assume no customer growth from the
9 year of the reconciliation to the year of collection
10 under the formula?

11 A I don't generally believe in absolutes. I
12 don't know that I would say no customer growth or no
13 customer loss.

14 Q Okay. Now, you also said in those sections
15 of your testimony we talked about earlier that the
16 billing determinants adjustment will create a
17 permanent and unrecoverable gap in the Company's
18 ability to recover the approved revenue requirement.

19 So my question to you is: Under
20 formula rates, Section 16-108.5, if the rates do not
21 produce the revenue requirements for the year in
22 which the rates were collected within a collar of

1 50 basis points of the ROE --

2 A I'm sorry, you are going to have to slow
3 down.

4 Q Are you not following me?

5 A No.

6 Q Let's say in a given year the rates do not
7 produce the expected revenue requirement, okay,
8 there's a shortfall?

9 A Okay.

10 Q Under formula rates, isn't it correct that
11 the Company has the opportunity to go back and
12 reconcile the amount it actually collected against
13 both its actual costs and its reason on equity for
14 that year?

15 A No.

16 Q Okay. So in -- let's make it like
17 concrete. Okay? Here we are in 2015, and we're
18 doing a case that looks back at 2013 costs. All
19 right?

20 A Yes.

21 Q And in 2013, ComEd did not recover its full
22 revenue requirements, in other words, it did not

1 recover its actual revenue requirement when you do a
2 retrospective review; isn't that correct?

3 A So if I understand your question, you're
4 saying in 2015, we're looking at --

5 Q I'm sorry?

6 A -- in 2015, you said we're looking at what
7 was collected in '13 and comparing that to '13 where
8 we didn't recover the actual rec- -- so you're
9 talking about the 2013 reconciliation?

10 Q Yes.

11 A Okay. So then, I'm sorry, what is your
12 question?

13 Q So my question is, is there an opportunity
14 to go back and determine whether the revenues
15 collected in 2- -- the revenues collected in 2014 for
16 '13 were sufficient to, number one, cover your costs;
17 and number two, provide you with a reason on equity
18 within a 50-basis point collar?

19 A No.

20 Q Okay. So you're not allowed to do that?

21 A No.

22 Q So what's the 230 million reconciliation

1 balance that consumers are paying?

2 A That's a reconciliation of revenue
3 requirement, not revenues.

4 Q And if your ROE falls below, then what
5 happens?

6 A Below --

7 Q Falls below the collar.

8 A If the ROE falls below the collar, you are
9 allowed to bring the ROE is to the collar. And the
10 same works on the flip side, if it's above the collar
11 you bring it down.

12 Q Does that adjust -- does that collar
13 adjustment take into consideration the revenues
14 produced by the rates? In other words, the actual
15 revenues received by the Company in the
16 reconciliation year?

17 A Yes. Yes.

18 Q And the statute says there's a 50 basis
19 point collar around which the revenues will be
20 analyzed; right?

21 A I don't know that that's what the statute
22 says.

1 Q Okay. Strike that. Because the statute
2 speaks for itself.

3 Okay. Is it -- do you -- do you
4 believe that ComEd bears the risk of revenue
5 fluctuation within the 50 basis point hourly collar?

6 A That's correct.

7 Q But is the Company protected from
8 deviations in revenue recovery beyond the collar?

9 A What do you mean by "protected".

10 Q You can charge consumers if you fall below
11 the collar?

12 A And we don't charge consumers if we come
13 down?

14 Q Correct.

15 A Yes.

16 Q Okay. So is it correct that the permanent
17 loss that you talk about in your testimony -- the
18 permanent and unrecoverable gap, is that that
19 50 basis point collar? Is that where the gap comes
20 in?

21 A Can you point me to where I say that?

22 Q You don't say it.

1 A Okay.

2 Q In fact, you don't say it. You don't,
3 that's why I'm asking you. If you don't, know that's
4 fine; but I'm trying to pin that down.

5 A I would have to consider that if it's only
6 what's in that.

7 Q I just want to make sure I have my
8 reference for my next question.

9 Do you remember testifying that there
10 was not a billing determinant adjustment in the
11 Ameren cases?

12 A I do.

13 Q I'm sorry, I'm not finding it in my notes.
14 Did you include in your testimony any
15 evidence related to Ameren's customer growth?

16 A No.

17 Q Would you agree that if there was no
18 customer growth in the Ameren service territory,
19 there would be no adjustment made to the billing
20 determinants to reflect customer growth?

21 A Are you asking me if there is zero customer
22 growth or negative customer growth?

1 Q I'm asking if you -- if there is no
2 customer growth, it's zero, it is neither negative
3 nor positive, would you agree that there would be no
4 basis for a billing determinant adjustment under
5 those circumstances?

6 A I would not agree that there is no basis.
7 I would say the math probably works out that there is
8 no adjustment, but if you're making an adjustment,
9 whether positive or negative, it should be
10 symmetrical.

11 Q Okay. Okay. But if there's no change,
12 then would there be any basis for an adjustment?

13 MR. RIPPIE: It's asked and answered.

14 MS. SATTER: I didn't get a "yes" or "no"
15 answer. I did ask it again.

16 JUDGE HAYNES: Overruled.

17 MR. RIPPIE: You're right.

18 THE WITNESS: I'm sorry, can you ask me one
19 more time?

20 BY MS. SATTER:

21 Q I just said, if there's no change in demand
22 or number of customers, do you agree there would be

1 no basis for a change in billing determinants?

2 A Well, what I testified to here is about the
3 customer growth adjustment and while I'm not an
4 expert on Ameren's formula, I do believe they include
5 projected plant improvements as well, which likely
6 include new business. Again, I'm not the expert on
7 Ameren. If there is no customer growth, I believe
8 mathematically that would result in no adjustment.

9 Q So when you say "likely include new
10 business," you don't really know whether it includes
11 new business or not, do you?

12 A I don't. I don't.

13 Q Okay. Now, I'd like to ask you some
14 questions about the reconciliation balance and the
15 ADIT.

16 A Okay.

17 Q Now, you talk about some -- you t- --

18 MR. RIPPIE: This is not an objection. It's
19 just we're at a roughly an hour and a half and I was
20 wondering if it's going to be a while, whether we can
21 take a couple minute break. I know that it's -- I'm
22 at the breaking point.

1 MS. SATTER: I'm okay with taking a break
2 either way.

3 JUDGE HAYNES: 5 minutes?

4 MR. RIPPPIE: Well, I mean, do you have a --

5 MS. SATTER: I'm fine.

6 MR. RIPPPIE: Do you have an estimate? If
7 you're only going to be another 10 or 15, let's just
8 do it.

9 JUDGE HAYNES: 5 minute break.

10 (Recess taken.)

11 BY MS. SATTER:

12 Q Miss Brinkman, now I want to switch to your
13 rebuttal testimony, Page 23 at Line 467. You talk
14 about the -- accounting for accumulated deferred
15 income taxes related to the reconciliation and you
16 state there that the reconciliation balance -- this
17 is at Line 472 -- the reconciliation balance is the
18 difference between the revenue requirement reflected
19 and delivery services charges for the prior year with
20 what the revenue requirement would have been had the
21 actual cost information been available; right?

22 A That's correct.

1 Q So, really, the reconciliation is simply
2 actual costs less revenue requirement that was
3 assumed for the year?

4 A Paraphrasing, I think that's fair.

5 Q So do you understand that both Mr. Effron
6 and Mr. Brosch agree that ComEd could collect that
7 difference?

8 A Can collect what difference?

9 Q The difference between the revenue
10 requirement reflected in delivery services charges
11 for the prior year and what the revenue requirement
12 would have been had the actual cost information been
13 available.

14 A And, I'm sorry, the question was, do I
15 think that Mr. Brosch and Mr. Effron think it's okay
16 to collect the reconciliation balance?

17 A That the reconciliation balance itself is
18 not at issue.

19 A I think that's fair.

20 Q But you disagree on the application of
21 interest to that reconciliation balance?

22 A How so?

1 Q The application of interest to a portion of
2 the reconciliation balance?

3 A Can you point me to where I say that?

4 Q So do you agree -- well, let's start over.

5 Do you believe that Mr. Brosch and
6 Mr. Effron disagree with ComEd about the right way to
7 apply interest to this difference that we just
8 described?

9 A I agree.

10 Q Now, at Page 27 and 28, you discuss
11 deferred taxes generally. This is in your rebuttal
12 testimony and on pages -- at the very bottom of
13 Page 30, Line 636 going into 637 you say, The
14 reconciliation balance does not include the income
15 tax on the reconciliation interest. Under the
16 present formula, ComEd will pay those taxes and never
17 recover them.

18 My question is, when you say, Will pay
19 those taxes, are you talking about paying taxes on
20 the interest on the reconciliation balance?

21 A I'm sorry, can you repeat the question,
22 please.

1 Q When you say at Line 637, Under the present
2 formula, ComEd will pay those taxes and never recover
3 them, my question is, those taxes refer to the taxes
4 on the interest portion of the reconciliation
5 adjustment?

6 A That's correct.

7 Q Okay. Now, is it correct that generally an
8 interest expense paid by a company is tax deductible,
9 an interest expense?

10 A It depends on what it is. I think there
11 are various forms of interest. Generally, I think
12 that's a fair statement.

13 Q If ComEd paid interest to finance the
14 reconciliation balance for the two-year period that
15 the reconciliation balance is outstanding, do you
16 agree that it could deduct the interest for tax
17 purposes?

18 A What do you mean by "if ComEd paid
19 interest"?

20 Q If ComEd financed the reconciliation
21 balance with an instrument on which it paid interest,
22 then would that interest be tax deductible?

1 A And are we in a hypothetical situation?

2 Q Yes.

3 A So, hypothetically, if ComEd financed the

4 reconciliation with a debt instrument, then

5 generally, yes, that interest is probably deductible.

6 Q So to the extent that the interest paid

7 equals the interest received -- the interest paid on

8 the debt instrument that you just referenced was

9 equal to the interest received as part of the

10 reconciliation adjustment, would the tax effect

11 essentially be neutral?

12 A I'm sorry, are we in the hypothetical again

13 where everything is financed with a debt instrument?

14 Q Yes.

15 A That assumes that I am receiving the same

16 interest costs that I am paying to the person that I

17 secured the funds from?

18 Q Yes.

19 A Yes.

20 Q Now, you're familiar with Mr. Warren's

21 testimony in this case; correct?

22 A Correct.

1 Q And speaking of his cost-based model, do
2 you recall Mr. Warren's testimony that the
3 application of the cost-based model to the
4 reconciliation under collection amount would,
5 therefore, apply the WACC derived interest rate to
6 the reconciliation under collection reduced by the
7 associated ADIT balance?

8 A I'm sorry, can you point me to that in his
9 testimony?

10 Q Go to ComEd Exhibit 23, Lines 161 to 167.

11 A I'm sorry, 161 to 167?

12 Q Lines 161 to 167.

13 A Okay. I'm there.

14 Q So you see his statement, The application
15 of this model to the reconciliation under collection?

16 A I do.

17 Q Okay. So according to Mr. Warren, is it
18 correct that a cost-based approach to calculated
19 interest on the reconciliation balance would require
20 an ADIT adjustment to the the number -- the
21 reconciliation amount that interest is applied to?

22 A Yeah, I believe that's correct.

1 Q Now, do you -- did you testify in
2 Docket 13-0318?
3 A I did.
4 Q And did you testify on the ADIT in the
5 reconciliation balance?
6 A The similar issue?
7 Q Yeah.
8 A Yeah.
9 Q And did you also testify on what was termed
10 grossing up the interest rate -- that WACC interest
11 rate on their reconciliation balance?
12 A I did.
13 Q Okay. And in this case, do you recall
14 testifying that the --
15 MR. RIPPIE: Are we talking about 318 or 355?
16 You, I think,. Talked about two different cases or --
17 I apologize if you didn't. I thought you mentioned
18 both the FRU and the investigation.
19 MS. SATTER: No. No. No. Only 3- --
20 MR. RIPPIE: Only 318. Okay.
21 MS. SATTER: -- -18.
22 MR. RIPPIE: Thanks.

1 MS. SATTER: I didn't refer to the other case.

2 BY MS. SATTER:

3 Q So talking about 13-0318, is it correct

4 that you testified that the WACC interest rate should

5 be grossed up for taxes?

6 A I believe.

7 A I believe that was in the 318 case, yes.

8 Q Okay. And that was your position?

9 A Yes.

10 Q Okay. And it was also your position that

11 the AG's recommendation that the reconciliation

12 balance be reduced by the ADIT before interest is

13 applied, you thought that was a bad idea? You

14 opposed that idea?

15 A In the 318 case?

16 Q In 318.

17 A I believe that's right.

18 Q So in the 13-0318 case, you were not making

19 a consistent -- well, strike that. Let me rephrase

20 that.

21 In the 13-0318 case, you did not

22 consistently apply Mr. Warren's cost-based model,

1 would you agree with that?

2 A Not as he defines it here, but I don't know
3 that we were in a cost-based model in 318.

4 Q Okay. I have one more question in your
5 surrebuttal on Page 10, Line 195 to 209, you
6 are talking about depreciation rate --

7 A I'm sorry, can I get there? can you please
8 give me the lines again?

9 Q 195 to 209. And this is really a question
10 more of clarification than anything else.

11 A Okay.

12 Q So if I understand your testimony, you seem
13 to be saying that customers should be indifferent to
14 whether the depreciation rate applied in a given year
15 is the updated rate because it will ultimately be
16 resolved in the reconciliation? Is that your
17 position?

18 A That's not what I'm saying.

19 Q Okay. Can you just explain what your
20 position is on that issue?

21 A Yeah. My position on this issue is
22 Miss Ebrey is recommending that we update

1 depreciation in the current formula for the updated
2 depreciation study and she would like that update not
3 only to the projected plant additions, which we have
4 included in the revenue requirement, but to
5 essentially all plant and what my position -- what I
6 am saying is in the initial formula case, 11-0721,
7 this issue was discussed and it is -- an agreed upon
8 approach was made in that case on how to calculate
9 that and because we are calculating that depreciation
10 only for the initial rate year, which will end up
11 getting reconciled and true'd-up; making that change
12 now is unnecessary because it will happen when the
13 rates are in effect and we see the actual costs.

14 Q Okay. So the updated reconciliation --
15 excuse me, the updated depreciation rate will be
16 applied when you do the reconciliation; is that
17 right?

18 A That's correct.

19 Q Okay. If the applicable updated
20 depreciation rate were used in this case for the
21 entire plant in rate base, would that reduce the
22 variance or the -- would that reduce -- potentially

1 reduce the size of the reconciliation balance?

2 A In this specific case?

3 Q Yeah.

4 A Well, we will be reconciling the rates that
5 we calculate in this case that will be in effect in
6 '15. We will reconcile those rates to the actual '15
7 revenue requirement. So I'm making an assumption
8 that we are in a growth year and we will have
9 increase in costs. In that situation, then this
10 because you would -- because Miss Ebrey's adjustment
11 would set the revenue requirement higher in this case
12 and I'm expecting that the reconciliation in '15
13 because we're in an increasing cost period would be
14 higher, that would lower the reconciliation balance;
15 but what I'm saying, if you look at the tables that I
16 include on Page 11 and 12 is that will not always
17 necessarily be the case. And, again, I'm assuming
18 '15 is an increasing year.

19 Q Is there any year during the formula rate
20 period that you do not expect it to -- that you do
21 not expect rate base to increase?

22 A I don't know that. I don't have the

1 forecast for every year.

2 MS. SATTER: Okay. I have no further
3 questions.

4 JUDGE HAYNES: Thank you.

5 MS. SATTER: I would like to move into the
6 record I believe it was two cross exhibits.

7 JUDGE HAYNES: AG Cross Exhibit 12 and 13.

8 MS. SATTER: Yes.

9 JUDGE HAYNES: Any objection?

10 MR. RIPPIE: No objection.

11 JUDGE HAYNES: Okay. AG Cross Exhibit 12 and
12 13 are admitted.

13 (Whereupon, AG Cross
14 Exhibit Nos. 12 and 13 were
15 admitted into evidence.)

16 JUDGE HAYNES: Is there more cross?

17 MS. HICKS: Your Honor, given the cross that's
18 already taken place, CCI won't be using our reserved
19 time right now. Thank you.

20 JUDGE HAYNES: Okay. Redirect?

21 MR. RIPPIE: Could we indulge the parties to
22 take a few minutes?

1 JUDGE HAYNES: Yes.

2 MR. RIPPIE: I don't think it will be more than

3 5.

4 JUDGE HAYNES: 10?

5 MR. RIPPIE: I don't think it will be more than

6 5.

7 JUDGE HAYNES: Okay. 5 minutes. Thanks.

8 (Recess taken.)

9 JUDGE HAYNES: Is there any redirect?

10 MR. RIPPIE: Yes, there is.

11 JUDGE HAYNES: Okay.

12 REDIRECT EXAMINATION

13 BY

14 MR. RIPPIE:

15 Q Miss Brinkman, going in reverse order,

16 Miss Satter asked you towards the end of her

17 examination whether you were present -- whether you

18 were familiar with Mr. Warren's written testimony and

19 you indicated that you were.

20 Were you also present here today for

21 Mr. Warren's live testimony?

22 A I was.

1 Q Do you recall Mr. Warren explaining the
2 conditions under which he would apply what he termed
3 the cost-based model?

4 A He would a-ply the cost-base model --

5 MS. SATTER: I'm going to object to any
6 restatement of another witness's testimony.

7 MR. RIPPIE: I asked whether she was here
8 when -- and then whether he recalled -- well,
9 actually, Miss Satter, that's not the question I
10 asked, but I'm going to ask it.

11 You spent a fair amount of time asking
12 her about Mr. Warren's cost-based model and what it
13 meant and whether her position was consistent with
14 his model. I'm entitled to explore that on redirect.

15 MS. SATTER: Absolutely. But --

16 MR. RIPPIE: That's all I'm going to do.

17 MS. SATTER: -- I don't think that it's
18 appropriate for Miss Brinkman to testify to relate
19 what she understand Mr. Warren testified to live
20 today.

21 MR. RIPPIE: Fair enough.

22 MS. SATTER: There is references to written

1 testimony which the Company is very particular about
2 when we ask questions and I think it's appropriate in
3 this situation as well.

4 BY MR. RIPPKE:

5 Q My question was, Were you here when
6 Mr. Warren explained the conditions that would apply
7 to his cost-based model?

8 A Mr. Warren stated that -- yes. The answer
9 is yes.

10 Q And was there only one such condition?

11 A No.

12 Q Now, Miss Satter talked about one. Do you
13 recall what the other two were?

14 A I believe the other two were when there --
15 it's necessary to get recovery of costs related to
16 the interest revenue -- I'm sorry, recovery of tax
17 cost related to interest revenue and when the ADIT is
18 real cash.

19 Q Okay. Is there any way under the
20 Commission's decision in 0318 and 0553 that
21 Commonwealth Edison can recover the tax costs related
22 to the incremental income -- interest income?

1 MS. SATTER: I'm going to object. This is
2 beyond the scope.

3 MR. RIPPIE: Of cross?

4 MS. SATTER: Of my cross.

5 MR. RIPPIE: Okay.

6 MS. SATTER: I asked very -- I asked what
7 Miss Brinkman testified to in 13-0318. She testified
8 to what she -- what she did in those cases -- in that
9 case and I asked if she was aware of Mr. Warren's
10 testimony, but we did not go into conditions and
11 whether there is recoveries -- whether ADIT is cash
12 or not cash or any of those details, so I think this
13 is way beyond --

14 MR. RIPPIE: I didn't ask her anything. This
15 question has nothing to do with Mr. Warren.

16 You asked her about interest income on
17 the reconciliation balance and, in particular,
18 whether it generated -- you discussed the tax
19 implications of that. My simple question is: Is
20 there any way under the current Commission decisions
21 that ComEd can recover its tax costs. That's my only
22 question.

1 JUDGE HAYNES: Overruled.

2 MS. SATTER: The question was whether the
3 interest was tax deductible and that was the
4 question.

5 BY MR. RIPPIE:

6 Q And my question is, is there any way to
7 recover it?

8 JUDGE HAYNES: You may ask -- you may answer
9 that question as he just restated it.

10 THE WITNESS: The answer is no.

11 BY MR. RIPPIE:

12 Q Does the ADIT, related to the
13 reconciliation balance, not under the hypothetical,
14 but in actual 2013, result in any cash benefit in the
15 rate year?

16 A No.

17 Q Okay. Again, not in a hypothetical, but in
18 the actual world, does ComEd finance its 2013
19 reconciliation balance only with debt?

20 A No. ComEd finances its reconciliation
21 balance with its weighted average cost of capital.

22 Q Okay. Now, let's go to billing

1 determinants for a minute.

2 Do you recall the hypothetical

3 Miss Satter asked you about Ameren and the

4 possibility that it would have an increase in number

5 of customers but no increase in its revenue

6 requirement?

7 MS. SATTER: Excuse me.

8 MR. RIPPIE: Is it not Ameren?

9 MS. SATTER: No, I didn't refer to Ameren.

10 BY MR. RIPPIE:

11 Q Okay. A hypothetical utility that had an

12 increase in the number of customers but no increase

13 in its revenue requirement.

14 A Yes.

15 Q Is that a realistic hypothetical

16 requirement in your view?

17 A In my view, no.

18 Q Do you recall the discussion of Ameren in

19 which Miss Satter hypothesized that Ameren might have

20 no customer increase and, therefore, there would be

21 no need for an adjustment?

22 A I recall that, yes.

1 Q In such a case, in your view, would the
2 comparable treatment of Ameren to the way ComEd has
3 its current formula be an adjustment that had -- I'm
4 sorry. Try again.

5 In such case, would the comparable
6 treatment be for Ameren to have the adjustment
7 formula in its rates but simply process a zero
8 customer number or would it -- never mind.

9 Let's try it this way: Is customer
10 growth the only billing determinant?

11 A No.

12 Q Miss Satter walked you through a
13 hypothetical in which the recovery of 2013 costs in
14 2015 resulted in an over recovery of revenue.

15 Do you recall that?

16 A I recall an example of 2013 and 2015, yes,
17 an over recovery, yes.

18 Q If we reversed the hypothetical, would the
19 result be an under recovery of billing determinants
20 -- an under recovery of revenues? Sorry.

21 A If we reverse the hypothetical? I don't
22 know what you mean by "reversing the hypothetical,"

1 I'm sorry.

2 Q Yeah. Let's try it this way: Do you
3 recall Miss Satter discussing the three elements that
4 are present in the 2015 total revenue requirement
5 being discussed in this case?

6 A I do.

7 Q And if you'll allow me, they were the 2013
8 actuals, the 2014 plant additions and the
9 reconciliation balance, which is also in the 2013
10 actual number?

11 A Correct.

12 Q Does the 2014 plant additions have any
13 permanent effect on the payments by customers over
14 time under EIMA ratemaking?

15 A No, they will be true'd-up to actual 2014
16 plant additions.

17 Q If the billing determinants, however, are
18 such that the Company under recovers -- that a
19 utility under recovers one of the other two elements
20 of the revenue requirement, is there any way to make
21 up for that loss?

22 A No.

1 Q Let's talk about incentive at risk
2 compensation. At the very beginning of your
3 cross-examination by Miss Cardoni, you were asked
4 about the three different plans that the Company had
5 in place.

6 Is there any clarification or
7 qualification you'd like to add to your answer?

8 A Yes. The one clarification I'd like to
9 make is Miss Cardoni talked about the AIP which
10 applies to -- which all ComEd employees are eligible
11 for, the LTPP, the Long-Term Performance Plan which
12 key managers are eligible for and then the Long-Term
13 Performance Share Award Program which executives are
14 eligible for. The one program that I missed was the
15 Restricted Stock Program that executives are eligible
16 for and that we remove from the revenue requirement.

17 Q And, lastly, do you recall questioning by
18 Mr. Doshi about the provision of the statute relating
19 to at risk pay or investment compensation expense
20 quoted in your testimony?

21 A I do.

22 Q I said "investment compensation" and I

1 meant incentive compensation. You understood that?

2 A I did.

3 Q The operative word that you were asked
4 about during that questioning was the word
5 "expenses." Is there any way that the shareholder
6 protection feature of the ComEd plans can result in
7 an incentive compensation expense?

8 A No.

9 Q Why is that?

10 A Because incentive compensation expense is
11 earned and it is only limited by the shareholder
12 protection feature, so the expense is earned
13 compensation -- is earned incentive compensation.

14 MR. RIPPPIE: That's all. Thank you very much.

15 MS. SATTER: I have one question.

16 RECROSS-EXAMINATION

17 BY

18 MS. SATTER:

19 Q Miss Brinkman, does the calculation of the
20 hourly collar separate revenues from the 2014
21 projected plant from other revenues.

22 A I'm sorry, can you ask that one more time?

1 Q Does the calculation of the hourly collar
2 separate 2014 projected plant revenues from other
3 revenues using, say, 2015 when we go back?

4 A Well in the current case, 2014 plant is not
5 in revenues.

6 Q No, no, no. When you go back and you look
7 at 2015 revenues and you calculate the hourly collar
8 for 2015; right?

9 A Uh-huh.

10 Q In calculating that collar, are the
11 revenues that ComEd received in 2015 as a result of
12 including 2014 projected plant addition in rates
13 separated out or counted separately?

14 A What do you mean by "counted separately"?

15 Q Are they included in the total revenues
16 that are included in the hourly collar calculation?

17 A The plant additions?

18 Q The revenues associated with the 2014 plant
19 additions?

20 A So if I can clarify, what you're asking me
21 is in the 2015 case next year when we reconcile 2014,
22 are the 2014 plant additions included in that number?

1 Q Are the revenues associated with them
2 included?

3 A By "them," you mean plant additions?

4 Q Yeah.

5 A For 2014?

6 Q Yeah.

7 A No.

8 Q Okay. So when you look at the 2014
9 reconciliation, the 2014 plant additions are not
10 included?

11 A When I look at the 2014 --

12 Q 2014.

13 A -- reconciliation next year --

14 Q Mm-hmm.

15 A -- and look at 2014 revenues?

16 Q Right.

17 A No.

18 Q Okay. Because you'll be using 2014
19 revenues that year?

20 A Right.

21 Q Okay. Okay. So there is kind of a gap?

22 In other words, the 2014 revenues will -- even though

1 they weren't based on 2014 projected plants -- will
2 be applied to that full year?

3 A To which full year?

4 Q To the 2014 full year.

5 A The 2014 revenues will be included in the
6 collar calculation related to the 2014
7 reconciliations.

8 Q Okay. And the 2015 year, the revenues in
9 2015 will then be considered in the 2015
10 reconciliation; right?

11 A That's correct.

12 Q And in that year, plant additions are
13 not -- are included in -- in the total costs of the
14 company; right?

15 A Well --

16 Q For 2014.

17 A Projected plant -- I'm sorry.

18 Q For 2015.

19 A I'm sorry, I'm so confused.

20 Q Okay. You said on redirect that the
21 Company will not recover costs other than the 2014
22 projected plant? Is that what you said on redirect?

1 Related to the billing -- you know because of the
2 change in the billing determinants?

3 A I don't think that's what I said.

4 Q Okay. Well, maybe there was a
5 misunderstanding on what you said on redirect. So
6 then my bottom line question is: Are all revenues
7 that the Company receives for a given calendar year
8 included in the reconciliation for that calendar year
9 in calculating the collar?

10 A Are all revenues?

11 Q Yes.

12 A That the Company receives, no.

13 Q For that given year.

14 A Not all revenues.

15 Q Okay. Which revenues are excluded?

16 A I would have to look at the collar
17 calculation to see what specifically is excluded.

18 Q Okay. Other than the collar -- I'm
19 implying the 50 basis point collar?

20 A That's right.

21 Q So you think there might be some revenues
22 that are excluded expressly from that calculation?

1 A I would have to look at the calculation. I
2 don't know off the top.

3 MS. SATTER: Okay. So you don't know. Okay.
4 Thank you.

5 RECROSS-EXAMINATION

6 BY

7 MR. DOSHI:

8 Q Miss Brinkman, I have one question for
9 you --

10 A Okay.

11 Q -- related to a question were Mr. Rippie
12 asked you on redirect.

13 My question is, in 2013, did the
14 shareholder protection feature operate to reduce
15 ComEd's incentive compensation expense below what it
16 would have been without the shareholder protection
17 feature?

18 A Well, what do you mean "without the
19 shareholder protection feature"? It was in that plan
20 and it was invoked.

21 Q I'll restate the question. In 2013 --

22 A Mm-hmm.

1 Q -- did the shareholder protection feature
2 operate to reduce ComEd's incentive compensation
3 expense below what it would have been if,
4 hypothetically, there were no shareholder protection
5 feature?

6 A And in your hypothetical, you're assuming
7 there's is no other limiter?

8 Q Correct.

9 A Yes.

10 MR. DOSHI: Thank you. That's all.

11 MR. RIPPIE: I actually have one with respect
12 to Mr. Doshi's last question, your Honors.

13 FURTHER REDIRECT EXAMINATION

14 BY

15 MR. RIPPIE:

16 Q Miss Brinkman, could you look at ComEd
17 Exhibit 12 Revised, Line 99?

18 A Yes.

19 Q Did the shareholder protection feature
20 create any incentive compensation expense in 2013?

21 A No.

22 MR. RIPPIE: Thank you.

1 JUDGE HAYNES: Okay. Anything further?

2 (No response.)

3 Thank you, Miss Brinkman.

4 THE WITNESS: Thank you.

5 MS. CARDONI: Judges, Mr. Bridal was scheduled

6 to be the last witness today and I understand there

7 is no cross for Mr. Bridal any longer, but I would

8 ask that he be put on the stand now ahead of

9 Mr. Prescott so that he can be excused if that's

10 acceptable.

11 JUDGE HAYNES: That is acceptable.

12 MS. CARDONI: So at this time, Staff would call

13 Rick Bridal to the stand.

14 JUDGE HAYNES: Good afternoon, Mr. Bridal.

15 THE WITNESS: Good afternoon.

16 JUDGE HAYNES: Please raise your right hand.

17 (Witness sworn.)

18 JUDGE HAYNES: Thank you.

19

20

21

22

1 RICHARD W. BRIDAL, II,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified via video as
4 follows:

5 DIRECT EXAMINATION

6 BY

7 MS. CARDONI:

8 Q Please state your full name for the record
9 and spell your last name.

10 A Just so you know, you are breaking up a
11 little bit. I'm having a little bit of difficulty
12 hearing you. My name is Richard W. Bridal, II
13 spelled B-r-i-d-a-l.

14 Q Who is your employer and what is your
15 business address?

16 A Illinois Commerce Commission, 527 East
17 Capital Avenue, Springfield, Illinois 62701.

18 Q What is your position at the Illinois
19 Commerce Commission?

20 A I'm an accountant in the Financial Analysis
21 Division.

22 Q Did you prepare written exhibits for

1 submittal in this proceeding?

2 A Yes.

3 Q Do you have before you a document marked
4 for identification as ICC Staff Exhibit 2.0
5 consisting of a cover page, a table of contents,
6 15 pages of narrative testimony, Schedules 2.01,
7 2.02, Attachments A and B and is entitled, The Direct
8 Testimony of Richard W. Bridal, II?

9 A Yes.

10 Q Did you prepare that document for
11 presentation in this matter?

12 A Yes.

13 Q Do you have before you a document marked
14 for identification as ICC Staff Exhibit 6.0
15 consisting a cover page, a table of contents, four
16 pages of narrative testimony and Schedule 6.01
17 entitled, The Supplemental Direct Testimony of
18 Richard W. Bridal, II?

19 A Yes.

20 Q Did you -- does that also include
21 Attachment A, Mr. Bridal?

22 A Yes, it does.

1 Q Did you prepare that document for
2 presentation in this matter?

3 A Yes.

4 Q Do you also have before you a document
5 marked for identification as ICC Staff Exhibit 8.0
6 consisting of a cover page, a table of contents,
7 38 pages of narrative testimony, Schedules 8.01, 8.02
8 and Attachments A through J and is entitled, The
9 Rebuttal Testimony of Richard W. Bridal, II?

10 A Yes.

11 Q Did you prepare that documents for
12 presentation in this matter?

13 A Yes.

14 Q Do you have any corrections to make to
15 staff Exhibits 2.0, 6.0 or 8.0?

16 Q I do. I have two corrections to make to my
17 rebuttal testimony, Staff Exhibit 8.0. The first
18 correction appears on Page 5 on Line Nos. 121 through
19 122. There, I identified Document No. 13-0321 and
20 the correct reference should be Docket No. 13-0318?

21 Q Do you have any other corrections?

22 A Yes. The second correction appears on

1 Page 17 in Footnote 21. There, the footnote reads,
2 Id at 18 and that should say, ComEd Exhibit 2.0 at
3 18.

4 Q Thank you.

5 With these corrections, is the
6 information contained in Staff Exhibits 2.0, 6.0 and
7 8.0 true and correct to the best of your knowledge?

8 A Yes.

9 Q And if I were to ask the same questions as
10 set forth in Staff Exhibit 2.0, 6.0 and 8.0, would
11 your responses be the same today?

12 A Yes.

13 MS. CARDONI: Your Honors, I move for the
14 admission into evidence of Staff Exhibits 2.0, 6.0
15 and 8.0 and all of the attachments and schedules. I
16 note, for the record, these documents were filed on
17 e-Docket July 1st, July 16th and August 14th of 2014,
18 respectively.

19 JUDGE HAYNES: Thank you.

20 Is there any objection?

21 MR. RIPPIE: None.

22 JUDGE HAYNES: Hearing none, those exhibits are

1 admitted.

2 (Whereupon, Staff
3 Exhibit Nos. 2.0, 6.0 and 8.0
4 were admitted into evidence.)

5 MS. CARDONI: Thank you.

6 JUDGE HAYNES: Thank you, Mr. Bridal.

7 MR. RIPPPIE: Your Honors, as we mentioned
8 earlier, there will be some exhibits moved into the
9 record containing data request responses of, at
10 least, two staff witnesses and with your permission,
11 we'll be doing that tomorrow after the electronic
12 documents are filed as well as Mr. Brosch and
13 Mr. Effron.

14 JUDGE HAYNES: That's acceptable.

15 MR. RIPPPIE: Thank you.

16 JUDGE HAYNES: Are we going ahead with another
17 witness?

18 MS. BARRETT: Your Honors, I need to make an
19 appearance for the record. Ronit Barrett from the
20 law firm of EimerStahl, LLP, 224 South Michigan
21 Avenue, Suite 1100, Chicago, Illinois 60604.

22 And ComEd would like to call its next

1 witness, Mr. Gary Prescott.

2 JUDGE HAYNES: Good afternoon, Mr. Prescott.

3 Please raise your right hand.

4 (Witness sworn.)

5 GARY PRESCOTT,

6 called as a witness herein, having been first duly

7 sworn, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY

10 MS. BARRETT:

11 Q Mr. Prescott, would you state and spell

12 your full name for the record.

13 A Sure. My name is Gary A. Prescott, that's

14 spelled G-a-r-y, A. Last name Prescott,

15 P-r-e-s-c-o-t-t.

16 Q And by whom are you employed?

17 A I'm employed by Exelon Business Services

18 Company.

19 Q And what is your position there?

20 A I'm the vice president of Corporate

21 Compensation.

22 Q Have you offered written testimony in this

1 proceeding?

2 A I have.

3 Q The first piece of testimony I'd like to
4 draw your attention to is marked as ComEd Exhibit
5 18.0 Revised. It's entitled, Revised Rebuttal
6 Testimony of Gary Prescott, Vice President, Corporate
7 Compensation on behalf of Commonwealth Edison
8 Company. It consists of 14 pages of questions and
9 answers and an attached is Exhibit 18.1.

10 Is this your rebuttal testimony in
11 this proceeding?

12 A It is.

13 Q Was this prepared by you or under your
14 direction and control?

15 A Yes.

16 Q And is it true to the best of your
17 knowledge and belief?

18 A Yes.

19 Q If I were to ask you the same questions
20 today, would your answers be the same?

21 A They would.

22 MS. BARRETT: Your Honors, ComEd Exhibit 18.0

1 Revised was filed on e-Docket on August 26th 2014 and
2 bears the e-Docket Serial No. 218161.

3 Exhibit 18.01 was filed on e-Docket on
4 July 23rd, 2014 and bears the e-Docket Serial No.
5 216810.

6 BY MS. BARRETT:

7 Q The second and last piece of testimony that
8 I'd like to call your attention to is ComEd Exhibit
9 31.0 and it is entitled, Surrebuttal Testimony of
10 Gary Prescott, Vice President, Corporate Compensation
11 on behalf of Commonwealth Edison Company. It
12 consists of 7 pages of questions and answers.

13 Is this your surrebuttal testimony in
14 this proceeding?

15 A It is, yes.

16 Q Was it prepared under your direction and
17 control?

18 A Yes.

19 Q Is it it true and correct to the best of
20 your knowledge and belief?

21 A Yes, it is.

22 Q And if I were to ask you the same questions

1 today, would your answers be the same?

2 A Yes, they would.

3 MS. BARRETT: Your Honors, this document was

4 e-Docket filed on August 21st, 2014 and bears the

5 e-Docket Serial No. 218041. I hereby move these

6 ComEd exhibits that I've described into the record.

7 JUDGE HAYNES: Any objection?

8 (No response.)

9 Hearing none, those exhibits are

10 admitted.

11 (Whereupon, ComEd

12 Exhibit Nos. 18.0 Revised, 18.01 and

13 31.0 were admitted into evidence.)

14 MS. BARRETT: And Mr. Prescott is available for

15 cross-examination.

16 JUDGE HAYNES: Okay. The AG?

17 MR. DOSHI: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY

20 MR. DOSHI:

21 Q Mr. Prescott, good afternoon.

22 A Good afternoon.

1 Q My name is Sameer Doshi. I'm an attorney
2 in the Attorney General's Office and I have some
3 questions for you about your rebuttal and surrebuttal
4 testimony, if you don't mind.

5 I'd like to start with your
6 surrebuttal which is Exhibit 31.0. Can you please
7 turn to Page 3? And at Lines 51 to 56 -- that's on
8 Page 3, you state that -- and you're referring to
9 language from -- from Section 16-108.5(c)(4)(A) of
10 the Public Utilities Act which actually appears --

11 MS. BARRETT: I'm sorry, could you give the
12 witness a moment? He was in his rebuttal testimony.
13 You are referring to surrebuttal; correct?

14 MR. DOSHI: Correct.

15 THE WITNESS: Go ahead, please.

16 BY MR. DOSHI:

17 Q So at Lines 51 to 56 on Page 3, you refer
18 to statutory language that you quote on Page 2 from
19 Lines 36 to 42 which is Section 16 -- it's an excerpt
20 from Section 16-108.5(c)(4)(A) of the Public
21 Utilities Act.

22 The statutory language you quote has

1 two sentences or a partial sentence and a full
2 sentence. The first and partial sentence -- I guess
3 I should say the partial first sentence refers to
4 incentive compensation expense based on the
5 achievement of operational metrics.

6 And in the second sentence in that
7 statutory language on Page 2 refers to incentive
8 compensation expense based on net income or
9 affiliates earnings per share.

10 And then getting back to Page 3, Lines
11 51 to 56, you say, The award created under the first
12 sentence of the statute is greater than the award
13 arguably calculated under the second sentence and I
14 believe you're referring to ComEd's 2013 incentive
15 compensation pay; is that correct?

16 A That is.

17 Q Can you explain what you mean by the term
18 "award"?

19 A With respect to the answer on 52 through
20 56?

21 Q Yes.

22 A What this refers to is the amount of award

1 earned based on the customer focused operational cost
2 control metrics. That's the first sentence.

3 Q So if I could interrupt, would that be --
4 under the language of ComEd's as AIP, would that be
5 the Company performance multiplier?

6 A Yes.

7 Q Okay. And then please continue.

8 A And in reference to the second sentence or
9 the second portion of that -- of the EIMA statute
10 listed there, if the award calculated on those --
11 what we believe to be permissible metrics -- based on
12 cost control and operational metrics, this is really
13 referring to the fact that the second sentence
14 doesn't really contribute anything toward the award
15 amount. The award amount is determined based on the
16 components, the performance, how well the employees
17 achieve against those eight objectives that are based
18 on cost control and operational goals.

19 Q Okay. Thank you. If I might cut you off?

20 MS. BARRETT: I'd rather you didn't cut him
21 off. I think he may have been done, but if he's not,
22 please let him finish.

1 MR. DOSHI: Okay.

2 THE WITNESS: So I guess the long way around to
3 the answer on your question is, the award that we're
4 referring to here is funded based on achievement of
5 the eighth operational and cost control metrics.

6 Anything that's related too any other
7 limiter is an after thought, it's a second step in
8 the process of the actual determination of what gets
9 paid out.

10 BY MR. DOSHI:

11 Q Okay. Thank you.

12 So I'm going to try to restate what
13 you said. By "award," you're referring to the
14 Company performance multiplier that's determined with
15 reference to ComEd KPIs; is that correct?

16 A No, that's not correct.

17 Q Does the actual AIP payout -- or are you
18 referring to the actual AIP payout as an award under
19 the terminology under your testimony?

20 A When we -- when we talk about the actual
21 award, there's -- it's an algebraic equation, if you
22 will, and it starts off with a person's base salary

1 and then there is a percentage of base salary, that's
2 called the target opportunity that's multiplied
3 against that. There is a company multiplier which is
4 what is driving the funding of the award. That
5 Company multiplier is a weighted payout percentage
6 based on achievement against the eight operational
7 cost control metrics that are permissible and the
8 plan was specifically designed to reward performance
9 related to how well we performed for customers.

10 Then there is an individual
11 performance multiplier which I believe Christine
12 Brinkman testified to already and that's applicable
13 to non-represented employees that participate in the
14 plan.

15 That's the actual equation. That's
16 the piece that comes through and determines the
17 payout.

18 The second step in that process is if
19 there is a limiter applied. Sometimes it's applied.
20 Sometimes it's not. It's a -- it's a limiter that's
21 put in the plan design. It's the Hallmark of a good
22 incentive design. I could point to non-utilities

1 that actually put programs like -- that actually put
2 this feature in because what you want to do in
3 incentive design space is make sure that you don't
4 create unintended consequences with your rewards.
5 You don't want to reward the wrong behaviors and
6 that's the purpose of putting that feature in there.
7 I just want to make that really clear for everybody.
8 That's really what it comes down to.

9 Q Okay. Thank you.

10 I'm going to ask you a question I
11 asked Miss Brinkman a few minutes ago. Did the
12 shareholder protection feature in 2013 reduce ComEd's
13 actual incentive compensation expense below what it
14 would have been if, hypothetically, there were no
15 shareholder protection feature?

16 A I'm not an accountant, so I really can't
17 talk to whether something would be an expense or not.

18 Q What if I substitute the word "award" in my
19 question?

20 A Restate your question for me, please.

21 Q Did the shareholder protection feature in
22 2013 reduce ComEd's actual paid out incentive

1 compensation award below what it would have been if,
2 hypothetically, there were no shareholder protection
3 feature?

4 A We're talking about 2013 in particular?

5 Q Yes.

6 A Okay. The 20- -- in 2013, the limiter was
7 invoked and it curtailed the final determination of
8 payout, but there's really a strong difference here.

9 That did not fund any type of
10 incentive in this process, that the funding of the
11 original award before any limiter was invoked is
12 determined on customer -- performance against
13 customer goals focusing on reliability, safety.
14 These were -- these are important goals, customer
15 focus and that's really the intent of the plan.

16 The limiter is something that's put in
17 plan that's really a reflection of the fact that
18 ComEd is part of a larger company and ComEd does
19 receive -- that customers do receive the benefit of
20 ComEd being part of a larger company just along in
21 terms of economies of scale in the supply chain, for
22 example. So that's really where that goes.

1 Q So if you don't mind, I'd like to know
2 whether your answer is affirmative or negative to my
3 question of whether the shareholder protection
4 feature in 2013 reduced actual ComEd AIP award or
5 actual AIP payout below what it would have been if,
6 hypothetically, there were no shareholder protection
7 feature?

8 MS. BARRETT: Objection. I think he did answer
9 that at the beginning of his answer.

10 MR. DOSHI: Would Mr. Prescott mind restating
11 whether the answer is "yes" or "no" because I wasn't
12 sure.

13 THE WITNESS: The shareholder limiter by
14 design, the limiter caps the award at a certain
15 level. In the case in 2013, performance against the
16 customer-based goals produced a percentage payout of
17 140.4 percent. Applying the limiter to that, the net
18 effect was that that amount that was originally
19 funded came down to 124.4. So if -- moving from
20 140.4 down to 124.4 is how you are doing to define,
21 did it reduce the award, then my answer would be yes.
22

1 BY MR. DOSHI:

2 Q Okay. Thank you.

3 On Page 4 of your surrebuttal at Line
4 78 to 79, you state that the threshold element -- I
5 think that refers to an EPS level under the
6 shareholder protection feature -- the threshold
7 element is a safety measure that would only come into
8 play as a result of an extraordinary financial event.

9 Do you see that?

10 A Yes.

11 Q My question is: How does Exelon
12 corporation or ComEd determine those particular
13 levels of EPS threshold and target under the
14 shareholder protection feature and -- I'll just leave
15 it at that?

16 A So is your question how is the EPS
17 performance scale developed --

18 Q Yes.

19 A -- in a given year when it applies to
20 incentive?

21 There is a very lengthy and involved
22 process that looks at budgets it looks at projected

1 revenues, it looks at expected performance. It's the
2 same process the Company goes through when it
3 communicates earnings guidance to the investment
4 community. So there is a correlation of where a
5 target is established with respect to the earnings
6 per share incentive scale and what gets communicated
7 to the investment community for -- for guidance.

8 The the range around that is based on
9 a number of modeling features that involves looking
10 at probabilities, looking at actual ratios of how
11 much of earnings should go toward incentive, it's a
12 fairly sophisticated model. It's not science, it's
13 not art, it's a little bit of both.

14 Q Okay. Thank you.

15 In any given year when Exelon
16 Corporation or ComEd sets the threshold EPS level
17 under the shareholder protection feature, do you know
18 what probability does Exelon assign to that threshold
19 level of EPS?

20 A An incentive design, in general -- and
21 consistent at Exelon -- you generally -- when you're
22 establishing a range, you look at threshold being

1 approximately achievable 90 percent of the time. You
2 look at hitting your target 40 to 50 percent of the
3 time and you look at achieving maximum 10 percent of
4 the time.

5 Now, those numbers are general
6 numbers, that's what we begin with. It's sort of a
7 starting point; but, you know, that's just all part
8 of the nature of the art of the modeling that goes
9 into it, that's just one feature in there with
10 respect to probability.

11 Q Okay. Thank you.

12 At Lines 84 to 85 on Page 4 in your
13 surrebuttal, you state, ComEd intends to amend the
14 plan. Where you say that, are you -- I'll just ask,
15 how does ComEd plan to amend the plan?

16 A That's premature at this point to discuss
17 what we're going to do. We have a Compensation
18 Committee charter that guides the Board on how
19 different committees within there actually perform
20 and have their authority delegated. The Compensation
21 and Leadership Development Committee actually is the
22 one that determines what the awards will look like.

1 Now, what my job is and senior
2 leadership's job is is to put together different
3 models. We do this every year and we take all
4 factors into consideration. As anyone who has
5 followed our record year over year, we have every
6 year tried to accommodate and focus -- pinpoint focus
7 our incentive plans on customer goals in order to
8 incent our employees to do what's best in that space
9 and that's why we fund goals with -- we fund the
10 annual incentive with customer performance goals.
11 The limiter is just something that comes in after the
12 fact.

13 Q Okay. Thank you.

14 Right now it's late August 2014.
15 Under the bylaws or other corporate rules of Exelon
16 Corporation and ComEd, is it too late to potentially
17 or hypothetically remove the shareholder protection
18 feature from ComEd's AIP for 2014?

19 A The Compensation Committee and its charter
20 has the authority -- the ultimate authority to decide
21 what incentive awards will be paid at the end of the
22 year and how they'll be paid. That's something that

1 every company has, as a delegated authority to their
2 compensation for any public company. So, to extend
3 that logic and say, Could the shareholder protection
4 feature be removed? At any time the plans can be
5 modified if the business situation calls for that. I
6 don't see that happening here, but at the end of the
7 year, it is the Comp Committee that decides what the
8 payout percentage ultimately is.

9 Q Okay. Thank you.

10 So it's -- is it possible that the
11 Compensation Committee could remove or disable the
12 shareholder protection feature for 2014?

13 A It's possible they could take that route.
14 It's possible they could keep it in. It's possible
15 that they could make a change, but probability and
16 when you're trying to run a Fortune 100 corporation,
17 it's not wise to do that -- to modify programs
18 mid-stream. It's just something you try to avoid
19 from a practical standpoint.

20 Q Okay. Thank you.

21 Also on Page 4 of your surrebuttal you
22 state, That ComEd also does not wish to continue

1 chasing regulatory interpretations that are
2 acceptable in one year, e.g. 2012, and unacceptable
3 in the next year e.g. 2013.

4 Are you contending that the
5 shareholder protection feature in ComEd's 2012 AIP
6 was a contested issue in a Commission proceeding and
7 the Commission approved it?

8 MS. BARRETT: I'm sorry, could you define
9 "contested"? I'm not sure what the witness knows
10 what you mean in this context.

11 BY MR. DOSHI:

12 Q I guess by "contested issue," I mean
13 parties other than ComEd challenged it in briefing in
14 the Commission proceeding.

15 A I'm not sure I can answer that question not
16 being a party to that in prior years.

17 Q So what is your basis for believing that
18 there was a regulatory interpretation in 2012 -- or
19 relating to the year 2012 that the shareholder
20 protection feature was acceptable?

21 A Through the -- in the statute that we had
22 in place, the goal -- the focus of the goals are on

1 the goals that we point to in the statute and focus
2 on the customers, the awards are funded based on
3 those goals as I've testified and we have adopted,
4 time and again, the incentive design to embrace the
5 direction of the Commission and others who have
6 weighed in.

7 Q Okay. Thank you.

8 I'd like to turn now to your rebuttal
9 testimony, Exhibit 18.0. On Page 4, Line 62, you
10 state that, ComEd sets total compensation at levels
11 that allow it to remain competitive with comparable
12 companies. This allows ComEd to compete in the
13 marketplace to attract and retain qualified
14 personnel?

15 A Mm-hmm.

16 Q Do you see that?

17 A Yes.

18 Q Hypothetically, if all of the pay at risk
19 under ComEd's AIP were instead made guaranteed based
20 salary --

21 A Mm-hmm.

22 Q -- would that make ComEd's pay package for

1 perspective employees more attractive than it is now?

2 MS. BARRETT: I'm going to object. I don't
3 know that he knows what is and is not attractive to
4 ComEd employees.

5 MR. DOSHI: At Line 63 of Mr. Prescott suggests
6 that ComEd's compensation is designed to compete in
7 the marketplace to attract and retain qualified
8 personnel. So it sounds like he has some knowledge
9 of what's attractive to employees.

10 JUDGE HAYNES: Overruled.

11 THE WITNESS: So restate your question, please.

12 BY MR. DOSHI:

13 Q My question was, hypothetically, if all pay
14 at risk pursuant to the AIP were converted to
15 guaranteed based salary, would that make ComEd's pay
16 package for perspective employees more attractive
17 than it is now?

18 A Well, it's really to say what people would
19 find attractive in a definitive sense here. If we're
20 talking hypotheticals, all my training in 25-plus
21 years of doing compensation, there is a risk reward
22 profile that you want to build into the pay package.

1 Companies with which we compete for talent do the
2 same thing.

3 If we come out and we don't offer an
4 upside opportunity for exceeding, in this case,
5 customer goals, we lose out on an opportunity to
6 attract those people to our company. People who work
7 for us if they, say, they look at their compensation
8 they is a see, it doesn't matter whether I exceed my
9 objectives or not, I'm going to be paid the same
10 thing, it follows in the space that people could be
11 lured away. The ones who want to exceed their
12 objectives focusing on customers will go to companies
13 that actually have an upside opportunity. That's the
14 theory behind it.

15 Q Thank you.

16 Do you know under the current ComEd
17 AIP -- or let's say under the 2013 ComEd AIP, after
18 considering the Company performance multiplier and
19 individual performance multiplier, what is the
20 maximum percentage of base salary that an employee
21 could theoretically earn under the AIP?

22 A It's dependent on the level of the

1 position.

2 Q Okay.

3 A Every one has a target opportunity. If
4 it's -- if someone's target opportunity, let's just
5 just for, again, hypothetical, say their target
6 percentage is 20 percent, they have the opportunity
7 to get any where from zero to 40 percent of base pay.
8 So we have a payout scale that goes from 50 percent
9 of their target opportunity at threshold; 100 percent
10 at target; 200 percent when they are at the
11 distinguished level of performance.

12 So I don't know if that answers your
13 question.

14 Q So if I understand it, if somebody were at
15 distinguished level -- now, does distinguished level
16 refer to the Company performance multiplier or
17 individual performance multiplier?

18 A It refers to the Company performance
19 multiplier, the level of of achievement against
20 customer goals in ComEd.

21 Q Okay. So if the Company performance
22 multiplier were at 200 percent -- let me ask a

1 different question.

2 What is the maximum percentage of
3 individual performance multiplier?

4 A The maximum percentage of individual
5 performance multiplier is 120 but it is subject to a
6 zero sum pool. So, theoretically, hypothetically, if
7 you had two employees paid the same, both with that
8 20 percent incentive target opportunity, if you
9 wanted to give one 5,000 more -- without doing the
10 math whatever that percentage is -- you have to take
11 5,000 away from someone else. So it's a zero sum --

12 Q Okay.

13 A -- that occurs with individual performance
14 multiplier.

15 Q Okay. So would it be correct to say that
16 theoretically an employee could earn as much as their
17 base salary, I should say to be gram- -- his or her
18 base salary times the 200 percent Company performance
19 multiplier times the 120 percent individually?

20 A No. The 200 percent is a hard cap.

21 Q Okay.

22 A So the combination of your performance

1 against of the customer goals multiplied times your
2 individual performance multiplier cannot exceed 200
3 errs of your target opportunity.

4 Q Oh, okay.

5 A So in that example I gave you of someone
6 with a 20 percent target, the most they could receive
7 would be 40 percent in any regard.

8 Q Okay.

9 A 200 percent of 20.

10 Q I see. Okay. Okay.

11 So the maximum an employee could
12 receive --

13 MS. BARRETT: Before you ask anymore questions
14 on this line I'm, going to object on relevance. It
15 seems to me this is going toward attacking incentive
16 compensation generally and I don't believe that's the
17 position of any party in this case. Perhaps you can
18 tie it to the issues in this case, but right now I
19 can't see that.

20 MR. DOSHI: Let me ask a different question.

21 BY MR. DOSHI:

22 Q Does the shareholder protection feature

1 operate to make the achievement of -- let me
2 rephrase.

3 Does the shareholder protection
4 feature operate to make an employee's actual receipt
5 of AIP incentive compensation for any given year less
6 certain?

7 A What was that last word? Less?

8 Q Less certain.

9 A Oh, less certain?

10 A That's difficult to say because you have to
11 let the year play out and that includes performance
12 against those operational goals and they get measured
13 on 12/31 of the calendar year. So the certainty is
14 never 100 percent there until the year is completed.

15 Q Do you know on what date the Exelon non-gap
16 EPS that's used in the calculation of the shareholder
17 protection feature for a given AIP year is
18 determined?

19 A Generally, yes.

20 Q What is the date?

21 A The date tends to be -- for internal
22 people, internal purposes, it tends to be about the

1 third week of January followed shortly thereafter
2 then public disclosure. As a public company, it
3 discloses it's earnings performance. The issue is
4 you can't release that information to employees until
5 you release it to the public because that would turn
6 everybody into insiders in the process.

7 Q Okay. Thank you.

8 So it sounds like APIs, for purpose of
9 the Company performance multiplier, are determined as
10 of December 31 and Exelon EPS for purposes of the
11 shareholder protection feature is determined, I think
12 you said, the third week of January?

13 A Approximately.

14 Q Okay. So would it be fair to say that
15 during those first few weeks of January, employees
16 have some uncertainty about what their actual AIP
17 payout will be because they don't yet know what the
18 Exelon EPS for purposes of the shareholder protection
19 feature would be?

20 A There is a period of time there in January.
21 The customer goals don't just roll up on
22 December 31st either. It takes time to track all

1 those metrics and pull it all in, so there is that
2 period of uncertainty between when you look at the
3 the limiter and when you look at the final company
4 performance multiplier. They're very close in time.

5 Q Would you say that the shareholder
6 protection feature is -- let me rephrase.

7 Would you say that Exelon EPS is a
8 variable that may partly determine actual incentive
9 of compensation payout?

10 A It is a factor that limits payouts.

11 Q Okay. Thank you.

12 Would ComEd's compensation mix be
13 more -- be more attractive to retained qualified
14 personnel as you've alluded to at Line 63 and 64 of
15 of your rebuttal if, hypothetically, there were no
16 shareholder protection feature?

17 MS. BARRETT: Objection. I think he's asked
18 and answered this.

19 JUDGE HAYNES: Can you restate the question?

20 MR. DOSHI: My question was: Would ComEd's
21 compensation mix be more attractive to retained
22 qualified personnel if, hypothetically, there were no

1 shareholder protection feature.

2 THE WITNESS: No.

3 JUDGE HAYES: Sustained. You don't have to
4 answer.

5 THE WITNESS: Thank you.

6 BY MR. DOSHI:

7 Q Mr. Prescott, I have -- I know I've gone
8 10 minutes longer than I've promised. I have two
9 more questions. On Page 11 of your rebuttal, at
10 Line 208 -- I'm sorry, at Line 213 you state -- the
11 question, Has ComEd sought recovery of the portion of
12 BSC's AIP based on EPS -- and I believe BSC refers to
13 Exelon Business Services Company; is that correct?

14 A Correct.

15 Q And then your answer is, No, in accordance
16 with the Commission order in Docket 11-0721, ComEd
17 has removed that portion of AIP from the revenue
18 requirement.

19 Do you see that?

20 A Yes.

21 Q My question is, of the portion of BSC's AIP
22 that has been included in ComEd's asserted revenue

1 requirements, does the shareholder protection feature
2 apply to that?

3 A Yes, it does.

4 Q Okay. Thank you. And I have one more
5 question.

6 Can you turn to Page 8 of your
7 rebuttal testimony at Line 146. The question is,
8 Mr. Brosch claims that the two plans, Exelon AIP and
9 ComEd AIP are one in the same; is that accurate?

10 Your answer is, No, they are separate
11 plans.

12 Now, I'm going to hand you a copy of
13 AG Exhibit 3.6 which consists of the Company's data
14 request response to AG 7.06 as well as the Company's
15 response to data request 9.06.

16 JUDGE HAYNES: Is this an attachment to
17 Mr. Brosch's testimony?

18 MR. DOSHI: Yes, it is, your Honor. It's in
19 the previously e-filed record -- or I shouldn't say
20 record, but it's been e-filed.

21 MS. BARRETT: Wait. Just a second. I'm not
22 sure what we've been given here.

1 MR. DOSHI: This is AG Exhibit 3.6 which
2 consists of the Company's response to data request
3 AG 7.06 along with attachments and the Company's
4 response to data request AG 9.06.

5 MS. BARRETT: Okay. And just for
6 clarification, Mr. Prescott, has not been designated
7 as the witness responsible for AG 7.06. I don't know
8 if that will affect your questioning.

9 JUDGE HAYNES: So go ahead and lay a
10 foundation.

11 MR. DOSHI: Okay. Thank you.

12 BY MR. DOSHI:

13 Q So at -- in your rebuttal testimony at
14 Line 148 you state that they are separate plans
15 "they," being Exelon AIP and ComEd AIP?

16 A Mm-hmm.

17 Q My question is: If you could review the
18 attachment to data request response AG 7.06 which is
19 included in AG Exhibit 3.6 that I handed to you and
20 the attachment is, I believe, the Exelon AIP formal
21 plan document, can you confirm that?

22 A Okay.

1 Q Can you confirm if that document included
2 in AG Exhibit 3.6 is the Exelon AIP formal plan
3 document?

4 A It resembles it if not it is.

5 Q Okay. Thank you.

6 Has the Company provided any ComEd AIP
7 formal plan document similar to that Exelon AIP
8 formal plan document you have there?

9 MS. BARRETT: I'm not sure the witness knows
10 everything that ComEd has produced in this case.

11 MR. DOSHI: Okay. I'll phrase it differently.

12 BY MR. DOSHI:

13 Q Does there exist a ComEd AIP formal plan
14 document similar to that Exelon AIP formal plan
15 document that you have there?

16 A I don't believe there is one. This
17 document is intended to function as an umbrella
18 document that covers the plans that are in place at
19 the various operating companies. It's really more
20 for legal efficiency than it is all really in one
21 document because of the similarities and really the
22 need to try to keep things even across the

1 enterprise.

2 Q Okay. Thank you.

3 So the ComEd AIP guidebook that
4 Miss Brinkman provided as ComEd Exhibit 2.01, is that
5 the only document describing the ComEd AIP?

6 MS. BARRETT: If the witness is familiar with
7 that exhibit, I don't know if you have it handy, if
8 you could show it to him.

9 MR. DOSHI: Do any of the ComEd counsels have
10 that handy?

11 MS. BARRETT: You are wanting Brinkman 2.01?
12 Is that what you said?

13 MR. DOSHI: 2.01.

14 BY MR. DOSHI:

15 Q My question is, is that document the
16 only --

17 MS. BARRETT: Is this what you want to ask him
18 about?

19 MR. DOSHI: Yes.

20 BY MR. DOSHI:

21 Q -- the only document that describes or
22 governs the ComEd AIP other than the Exelon AIP

1 formal plan document?

2 MS. BARRETT: And when you say "the only
3 document that describes" do you mean in the world or
4 produced in this case? I'm not sure what you're
5 referring to.

6 BY MR. DOSHI:

7 Q Is it the only document that describes the
8 terms of the ComEd AIP?

9 MS. BARRETT: Same objection. Do you mean
10 produced in this case or in existence?

11 MR. DOSHI: In existence.

12 THE WITNESS: Here's what I'm comfortable
13 testifying to because I don't know what exhibit -- I
14 don't know exists. I do know that we do have a ComEd
15 summary brochure, this is the level that you give to
16 the participants --

17 Q Are you referring to the Exhibit 2.01?

18 A I'm referring to Exhibit 2.01, yes.

19 -- so this -- this brochure is handed
20 out to employees, made available to employees to
21 download from the Web site so that they understand
22 the program, the terms, the conditions, goals, how

1 the program works on an employee communication level,
2 it's not the legal document necessarily.

3 The umbrella document is that first
4 one that -- the one is that is the umbrella, the
5 legal documents that covers all the plans. One --
6 one legal plan document, every operating company has
7 a brochure like this, this is separate, specific for
8 their plan within each op co.

9 MR. DOSHI: Okay. Thank you.

10 That's all my questions, sir. Thank
11 you.

12 JUDGE HAYNES: Was there other cross?

13 MS. HICKS: Your Honors, I do. I have truly
14 10 minutes or less.

15 JUDGE HAYNES: Okay.

16 CROSS-EXAMINATION

17 BY

18 MS. HICKS:

19 Q Good afternoon, Mr. Prescott. My name is
20 Christie Hicks and I represent the Citizens Utility
21 Board.

22 I'd like to start by directing you to

1 your rebuttal testimony, ComEd Exhibit 18.0 at
2 Page 14 and if you could look at Lines 276 to 283 for
3 me, please.

4 A Okay.

5 Q Now, your position is that in contrast to
6 the Annual Incentive Plan or AIP, which provides
7 immediate compensation to employees, the Long-Term
8 Performance Plan or LTPP is intended to retain ComEd
9 please for the long term; is that correct?

10 A Yes, it is.

11 Q Now my next questions are going to be with
12 regard to ComEd employees that are eligible to
13 receive the LTPP.

14 A Okay.

15 Q Isn't it correct that those ComEd employees
16 accrue vacation time based on service with the
17 company?

18 A It is true that all employees accrue
19 vacation time, yes.

20 Q And the rate of their accrual is dependent
21 upon the length of their employment?

22 A At certain milestones of service, all

1 employees receive additional vacation. It's a
2 competitive practice that we follow in order to
3 attract and retain employees to the company. It's
4 very consistent and right in the middle of what other
5 companies provide to their employees.

6 Q Okay. My questions aren't about what any
7 other companies provide. I'm just specifically
8 asking about ComEd's practices.

9 Now, employees with one to four years
10 of service accrue 11 vacation days per year; is that
11 correct?

12 A Correct.

13 Q And employees with 30-plus years of service
14 with ComEd, accrue about 30 vacation days per year;
15 is that correct?

16 MS. BARRETT: Is there something you are
17 referring to? He's not sure. He testified to --

18 BY MS. HICKS:

19 Q Sure. I'm referring to the response that
20 you provided CCI 1.02?

21 MS. BARRETT: Yes. He doesn't have it, if you
22 could just show it to him.

1 MS. HICKS: I can. I didn't intend to need to
2 introduce it but I can provide that. I can pass it
3 out if need to introduce it.

4 BY MS. HICKS:

5 Q Does that refresh your recollection?

6 A Yes, it does.

7 Q So ComEd employees with 30-plus years of
8 service accrue 30 vacation days per year; is that
9 correct?

10 A Correct.

11 Q And isn't also correct that ComEd employees
12 receive gifts upon receiving milestone service dates?

13 A It is true that we have a Service Award
14 Program, correct.

15 Q And that service -- I'm sorry, you call it
16 it a Service Award Program?

17 A Service Award Program, yes.

18 Q Okay. And that program provides gifts of
19 nominal value on milestone service anniversaries?

20 A That's correct, less than \$100 in value.

21 Q And isn't it also true that ComEd retiree
22 medical benefits are based on age and length of

1 service with the company?

2 A It is true that we do have a retiree
3 medical plan that requires age and service in order
4 to qualify for it, yes.

5 Q There's a length of service component?

6 A Length of service and age, yes.

7 Q Okay. And there is a length of service
8 based component to the pension benefit that certain
9 ComEd employees are eligible for as well; is that
10 correct?

11 A If hired by a certain date, yes.

12 Q Okay. The amount of AIP compensation that
13 an employee receives in a given year is not dependent
14 upon the amount of LTPP compensation that the
15 employee receives that year; is that correct?

16 MS. BARRETT: I'm sorry, could you are clarify?
17 Are you talking about percentages of compensation or
18 actual dollars?

19 MS. HICKS: Dollars.

20 THE WITNESS: The plans operate independently.

21 BY MS. HICKS:

22 Q So the amount -- the dollar amount that an

1 employee receives under AIP does not affect the
2 dollar amount that they will then receive under LTPP;
3 is that right?

4 A That is correct.

5 MS. HICKS: I have no futher questions?

6 JUDGE HAYNES: Thank you. Redirect?

7 MS. BARRETT: I believe we will have some if we
8 could just have a few minutes.

9 JUDGE HAYNES: Sure.

10 (Recess taken.)

11 MS. BARRETT: We do have redirect

12 JUDGE HAYNES: Okay. Go ahead.

13 REDIRECT EXAMINATION

14 BY

15 MS. BARRETT:

16 Q Mr. Prescott, I'd like to ask you a few
17 questions on redirect. Going in reverse order in the
18 questions that you were asked, Miss Hicks asked you
19 about certain benefits that ComEd confers on its
20 employees based on years of service, vacation pay,
21 retirement benefits, nominal gifts after a certain
22 number of years of service.

1 Do you know if these types of benefits
2 are commonly offered by investor-owned companies?

3 A They are commonly offered --

4 MS. HICKS: I'm sorry. I have an objection to
5 that. I believe it's outside the scope of my cross
6 and my cross was limited specifically to the benefits
7 that ComEd offers and not to what any other company
8 offers.

9 In addition, I don't think the
10 evidence of the market is relevant to the very
11 specific questions I asked about the benefits offered
12 to ComEd employees eligible for LTPP.

13 MS. BARRETT: If I may respond. If this
14 redirect is not relevant, then the direct was not
15 relevant either. The --

16 JUDGE HAYNES: She did -- how about responding
17 to the she didn't ask about other company's benefits?

18 MS. BARRETT: The only reason I think that
19 she's asking these questions is to show that ComEd
20 doesn't need to provide the LTPP because it would --
21 which is the long-term incentive compensation because
22 it provides, you know, a watch after someone has been

1 there for 20 years and I'd like to show that other
2 companies, including her clients, do these same exact
3 things, that to maintain market competitiveness, you
4 have to still offer long-term incentive compensation.
5 Retiree benefits is not enough.

6 JUDGE HAYNES: Objection sustained.

7 BY MS. MS. BARRETT:

8 Q Let's talk about something that Mr. Doshi
9 asked you. It was on Page 4 of ComEd Exhibit 31 and
10 he was -- beginning around Lines 85 to 86. He asked
11 you about chasing regulatory interpretations and --
12 that were acceptable in 2012 and not acceptable in
13 2013.

14 Do you recall that?

15 A Yes.

16 Q Can you describe the limiter that was in
17 effect in ComEd's AIP in 2012?

18 A The same limiter that was in effect in 2013
19 was in effect in 2012.

20 Q And do you know if any AIP was disallowed
21 in 2012?

22 A No AIP was disallowed.

1 Q And did ComEd reach any conclusions based
2 on that Commission decision?

3 Q As part of our annual review, we determined
4 that based on ICC precedent, that inclusion of a
5 limiter was prudent and reasonable in the plan and
6 consistent with the provisions of EIMA?

7 Q And Mr. Doshi also asked you several
8 questions about calculating the amounts under the two
9 sentences that you quote in your testimony from EIMA.
10 Do you recall that?

11 A Yes.

12 Q Can you describe the components of the 2013
13 AIP award that is earned? I'm asking you what you
14 believe that that earned award -- what components
15 that's based on?

16 A That is based on the cost control and
17 operational goals that have been described in
18 testimony.

19 Q And can you describe the components of the
20 award that's actually paid out?

21 A It is the same components that determine
22 what gets paid out.

1 MS. BARRETT: And I actually have a redirect
2 exhibit that I would like to use.

3 BY MS. BARRETT:

4 Q Referring to the exhibit and the
5 testimony --

6 MS. SATTER: Excuse me. We need to see the
7 exhibit.

8 MS. BARRETT: I'm sorry. I thought she was
9 done.

10 MS. SATTER: No. I think we need to minute to
11 take a look at it.

12 (Whereupon, ComEd Redirect
13 Exhibit No. 1 was
14 marked for identification.)

15 BY MS. BARRETT:

16 Q What was the amount of -- roughly the
17 amount of AIP that was earned by ComEd employees in
18 2013?

19 A The amount that was earned was 66 million.

20 Q And what does that 66 million reflect
21 achievement of?

22 A It is a composite-weighted average of

1 performance of each of the goals that are list the
2 OSHA, SAIFI -- so OSHA covering safety, SAIFI and
3 CAIDI covering frequency and duration of outages,
4 customer operations index, the EIMA index, customer
5 service and then the cost control measures of O & M
6 and capital expenditures.

7 Q And what was the -- roughly the amount of
8 AIP paid out to ComEd employees in 2013?

9 A Approximately 57.5 million.

10 Q And does that 57.5 million reflect
11 achievement of?

12 A The same eight metrics that are listed that
13 are described above.

14 Q And can you explain how the EPS limiter
15 factors into this situation?

16 A The EPS limiter served to reduce awards, to
17 cap awards to the effect of 8 and a half million.

18 Q Can you think of any other examples where
19 the amount of money earned is different than the
20 amount taken home by employees?

21 A I think a great way to illustrate this is
22 to think about what employees actually take home is

1 based on related to, influenced, however you want to
2 think of it -- on the income tax rules; but one would
3 not argue that the Internal Revenue Code determines
4 awards.

5 MS. BARRETT: I have no further questions.

6 JUDGE HAYNES: Do you have a follow-up?

7 MR. DOSHI: Your Honor, I have a couple recross
8 questions, if you don't mind.

9 JUDGE HAYNES: Quickly.

10 RECROSS-EXAMINATION

11 BY

12 MR. DOSHI:

13 Q Mr. Prescott, I'm going to go in reverses
14 order of the redirect questions.

15 My first question is, does ComEd's
16 payroll expense depend in any way on IRS rules for
17 individual income tax?

18 MS. BARRETT: I'm going to object. He's
19 already said he's not an accountant and can't really
20 speak to expenses as you're define them.

21 MR. DOSHI: I'll rephrase.

22

1 BY MR. DOSHI:

2 Q When ComEd designs it's AIP or -- I'm
3 sorry, when Exelon or ComEd designs the ComEd AIP,
4 is -- are IRS rules on individual income tax
5 considered?

6 A They are not. As they vary by individual.

7 Q Okay. Thank you.

8 Would you agree that Exelon EPS was a
9 factor that entered into the shareholder protection
10 feature calculation as it relates to ComEd's 2013
11 AIP?

12 A Well, by the nature of the shareholder
13 protection feature, it's called an EPS limiter
14 sometimes. It is based on EPS performance if we're
15 talking about the limiter here. If you're talking
16 about incentive earnings, how awards are funded,
17 that's -- EPS has nothing to do with that. The
18 limiter is based on EPS.

19 Q Okay. Thank you.

20 Finally, did the Commission make any
21 explicit ruling in any prior Commission proceeding,
22 to your knowledge, that the shareholder protection

1 feature in ComEd's 2012 AIP was compliant with
2 applicable law?

3 MS. BARRETT: I'm sorry, but could you define
4 "explicit ruling"?

5 MR. DOSHI: By "explicit ruling," I mean the
6 Commission explicitly in language discussed the issue
7 of the shareholder protection feature as it relates
8 to ComEd's 2012 AIP.

9 MS. BARRETT: If the witness knows, I'm not
10 sure he's reviewed the order.

11 THE WITNESS: I can't help you with that. I
12 don't have an answer. I don't know what the
13 Commission -- stipulated.

14 MR. DOSHI: Okay. Thank you.

15 That's all my recross questions, your
16 Honor.

17 JUDGE HAYNES: Great. Thank you.

18 Redirect?

19 MS. BARRETT: No, other than I'd like to move
20 for admission as ComEd Redirect Exhibit 1, I think.

21 JUDGE HAYNES: Okay. Objection?

22 MR. DOSHI: No, your Honor.

1 JUDGE HAYNES: Okay. ComEd Redirect Exhibit 1
2 is admitted.
3 (Whereupon, ComEd Redirect
4 Exhibit No. 1 was
5 admitted into evidence.)
6 And you you need to provide three
7 copies to the court reporter
8 MS. BARRETT: Okay.
9 JUDGE HAYNES: Okay. And thank you,
10 Mr. Prescott.
11 We are continued then until tomorrow
12 morning at 10:00 a.m.
13 (Whereupon, an evening
14 recess was taken to resume
15 on August 28, 2014 at 10:00 a.m.)
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